Office - Supreme Court, U.S.
FILED
JUN 7 1985
ALEXANDER L. STEVAS
CLERK

(6)

No. 84-1273

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

REGENTS OF THE UNIVERSITY OF MICHIGAN,
Petitioner,

v.

SCOTT E. EWING,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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JOINT APPENDIX

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PETITION FOR CERTIORARI FILED JANUARY 29, 1985
CERTIORARI GRANTED MARCH 25, 1985

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A. Final Judgment, United States District Court for the Eastern District of Michigan, Southern Division (December 4, 1984) 1a

B. Memorandum Opinion, United States District Court for the Eastern District of Michigan, Southern Division (December 15, 1982) [*Ewing* v. *Board of Regents of The University of Michigan,* 552 F.Supp. 881 (E.D. Mich. 1982)] 4a

C. Opinion, United States District Court for the Eastern District of Michigan, Southern Division March 22, 1983) [*Ewing* v. *Board of Regents of The University of Michigan,* 559 F.Supp. 791 (E.D. Mich. 1982)] 12a

D. Opinion, United States Court of Appeals for the Sixth Circuit (September 6, 1984) [*Ewing* v. *Board of Regents of The University of Michigan,* 742 F.2d 913 (6th Cir. 1984)] 28a

E. Judgment, United States Court of Appeals for the Sixth Circuit (September 6, 1984) 34a

F. Order Denying Petition for Rehearing *En Banc,* United States Court of Appeals for the Sixth Circuit (October 31, 1984) 35a

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

United States District Court, Eastern District of Michigan, Southern Division (Ann Arbor)

Date—Entry #—Document

08/19/82—1—Complaint

08/26/82—6—Order of disqualification and reassignment to Judge Feikens

09/08/82—9—Defendant's Motion to Dismiss Count III for Failure to State a Claim, Motion for More Definite Statement, Motion to Strike, and Motion to Compel Separate Numbering of Paragraphs

09/15/82—10—Plaintiff's Motion for Entry of Preliminary Injunction

09/28/82—13—Defendant's Partial Objections and Partial Answers to Plaintiff's First Set of Interrogatories

09/28/82—14—Defendant's Objections to Plaintiff's Second Set of Interrogatories

09/28/82—15—Defendant's Response to Plaintiff's First Request to Admit Facts and Genuineness of Documents

09/28/82—16—Defendant's Response to Plaintiff's First Request for Production of Documents

10/05/82—20—Plaintiff's Response in Opposition to Defendant's Motion to Dismiss

10/14/82—22—Defendant's Response in Opposition to Plaintiff's Motion for Entry of Preliminary Injunction

10/18/82—25—Plaintiff's Motion to Overrule Defendant's Objections to Interrogatories and Document Requests

DOCKET ENTRIES Continued

Date—Entry #—Document

10/21/82—26—Plaintiff's Exhibits A through D, Attachments and Affidavits of Scott E. Ewing, Robert E. Anderson, M.D., Robert J. Schott, M.D., and Michael Liepman, M.D., in support of his Motion for Preliminary Injunction

10/21/82———Bench rulings:

—Plaintiff's Motion for Preliminary Injunction—case put on accelerated docket

—Plaintiff's Motion to Overrule Defendant's Objections to Interrogatories and Document Requests—defendant ordered to produce statistics with respect to other students who failed the NMBE, but not those students' names or files. Protective Order to be stipulated to later if necessary

—Defendant's Motion to Dismiss—taken under advisement

10/29/82—28—Defendant's Brief on Issue of Waiver of Government Immunity

10/29/82—31—Notice of Settlement Conference and Trial Date:

—Settlement conference: 1/5/83
—Trial: 1/10/83

11/02/82—30—Plaintiff's Supplemental Brief in Opposition to Motion to Dismiss

11/15/82—33—Plaintiff's Amended Complaint

11/30/82—35—Answer to Plaintiff's Amended Complaint

11/30/82—36—Protective Order

DOCKET ENTRIES Continued

Date—Entry #—Document

11/30/82—37—Order compelling filing of First Amended Complaint and Answer and Regulating Discovery

12/15/82—39—Memorandum Opinion and Order Granting Defendant's Motion to Dismiss Count III

12/20/82—40—Defendant's Answers to Plaintiff's Third Set of Interrogatories, Defendant's Amended Answers to Plaintiff's First and Second Interrogatories, and Defendant's Amended Response to Plaintiff's First Request for Production of Documents

01/05/83—46—Plaintiff's Trial Brief

01/08/83—44—Defendant's Trial Brief

01/10/83———Bench trial begins; testimony taken

01/11/83———Bench trial continues; testimony taken

01/12/83———Bench trial continues; testimony taken

01/12/83—47—Plaintiff's Supplemental Trial Brief

01/14/83———Bench trial continues; closing arguments Taken under advisement

01/14/83—48—Defendant's Post-Trial Brief

03/22/83—49—Opinion—in favor of defendant and against plaintiff on all counts

04/05/83—50—List of plaintiff's trial exhibits

04/05/83—52—Revised list of defendant's trial exhibits

04/11/83—55—Judgment of No Cause for Action and Order Denying Injunctive Relief

05/05/83—56—Notice of Appeal by plaintiff from Judgment and Order

DOCKET ENTRIES Continued

Date—Entry #—Document
08/24/83—67—Stipulation and Order Modifying Protective Order entered 11/30/82
11/13/84———File returned from Sixth Circuit Court of Appeals
12/04/84—80—Final Judgment

United States Court of Appeals for the Sixth Circuit

05/12/83—1—Notice of Appeal; cause docketed

07/70/83—8—Certified record filed

10/18/83—8—Appellant's Brief

11/28/83—9—Appellee's Brief

12/27/83—12—Appellant's Reply Brief

01/03/84—14—Joint Appendix

07/18/84—16—Oral argument

09/06/84—17—Opinion

09/20/84—18—Appellee's Petition for Rehearing En Banc

10/31/84—21—Order Denying Petition for Rehearing En Banc

11/08/84—22—Mandate Issued

RELEVANT PLEADINGS

United States District Court for the Eastern District of Michigan

UNITED STATES OF AMERICA
.UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION
ANN ARBOR

No. 82-60271

SCOTT E. EWING,
Plaintiff,

vs.

BOARD OF REGENTS OF THE UNIVERSITY OF MICHIGAN,
Defendant.

HON. JOHN FEIKENS, Chief Judge

Excerpts From MEMORANDUM BRIEF IN SUPPORT OF MOTION TO DISMISS COUNT III FOR FAILURE TO STATE A CLAIM; and, as to the remaining counts, MOTION FOR MORE DEFINITE STATEMENT, MOTION TO STRIKE AND MOTION TO COMPEL SEPARATE NUMBERING OF PARAGRAPHS

[Filed September 8, 1982]

• • •

[p. 4]

• • • In fact, the Eleventh Amendment bars any damage action against either the University or its officials here. *Weisbord* v. *Michigan State University*, 495 F Supp 1347 (W.D. Mich. 1980). It is only as to prospective injunctive relief (such as that sought in Counts I and II of instant plaintiff's Complaint) that the immunity defense of the

Eleventh Amendment is inoperative. *Edelman* v. *Jordan*, 415 US 651 (1973); and *Tayyari* v. *New Mexico State University*, 495 F Supp 1365 (D. N.M. 1980).

• • •

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION
ANN ARBOR

No. 82-60271

SCOTT E. EWING,
Plaintiff,

vs.

BOARD OF REGENTS OF THE UNIVERSITY OF MICHIGAN,
Defendant.

HON. JOHN FEIKENS, Chief Judge

Excerpts From DEFENDANT'S RESPONSE TO PLAINTIFF'S FIRST REQUEST TO ADMIT FACTS AND GENUINENESS OF DOCUMENTS

[Filed September 28, 1982]

NOW COMES the defendant, by counsel, and repeats and answers plaintiff's First Request to Admit Facts and Genuineness of Documents as follows:

REQUEST NO. 1

No student, other than Plaintiff Scott E. Ewing, has been dismissed from the University of Michigan Medical School or the Inteflex Program as a result of only a single failure of the National Board of Medical Examiners Part I test.

ANSWER TO REQUEST NO. 1

Plaintiff was not dismissed only because of his single failure of the NBME Part I test; he had other deficiencies as well and had received a prior warning. Thus, no student,

including plaintiff, was dismissed solely because of a failure of the NBME Part I test. Mr. Ewing was dismissed because he failed the NBME Part I test after being placed on warning.

• • •

REQUEST NO. 3

It is a policy of the University of Michigan Medical School to allow at least one retest if a student fails to achieve a passing grade on the National Board of Medical Examiners Part I test.

ANSWER TO REQUEST NO. 3

It is not a policy but a practice which is observed *only* where the student has not been warned for prior deficient, unacceptable or inadequate work.

• • •

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION
ANN ARBOR

No. 82-60271

SCOTT E. EWING,
Plaintiff,

vs.

BOARD OF REGENTS OF THE UNIVERSITY OF MICHIGAN,
Defendant.

HON. JOHN FEIKENS, Chief Judge

Excerpts From DEFENDANT'S PARTIAL OBJECTIONS AND PARTIAL ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES

[Filed September 28, 1982]

NOW COMES the defendant, by counsel, and makes partial objections and partial answers to plaintiff's First Set of Interrogatories as follows:

• • •

INTERROGATORY NO. 5

State the reason why Plaintiff Scott E. Ewing was not permitted to retake the National Board of Medical Examiners Part I test after failing to achieve a passing grade on only the June, 1981, session of the test.

ANSWER TO INTERROGATORY NO. 5

In reviewing plaintiff's overall record, the Inteflex Promotion Board warned Mr. Ewing, and restated such warn-

ing after a subsequent review, that if he received any more deficiencies he would be dropped. Mr. Ewing then took the NBME Part I test and received a grade of 235, which was the lowest grade for his entire class and one of the lowest grades in the history of the Medical School. A score of 235, when a passing score was 345, clearly was a deficiency and the Inteflex Promotion Board thus exercised its previous warning and dropped plaintiff from the Medical School.

• • •

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION
ANN ARBOR

No. 82-60271

SCOTT E. EWING,
Plaintiff,

vs.

BOARD OF REGENTS OF THE UNIVERSITY OF MICHIGAN,
Defendant.

HON. JOHN FEIKENS, Chief Judge

Excerpts From MEMORANDUM BRIEF IN OPPOSITION TO PLAINTIFF'S MOTION FOR ENTRY OF PRELIMINARY INJUNCTION

[Filed October 14, 1982]

• • •

[p. 11]

• • • Because the defendants have interposed the defense that the Eleventh Amendment prevents recovery of money damages, the only relief which plaintiff can obtain if he is successful is equitable.

• • •

[pp. 30-31]

If defendant University is found to be liable to plaintiff and is also unsuccessful in sustaining its defense of Eleventh Amendment immunity from damages, plaintiff will have adequate remedies at law. He can be compensated for time spent in review, or even for review tutorial ex-

penses. There are reasonable bases for calculating income he has lost during the time he has not been a medical doctor. The "personal reward" he has missed is no more speculative and no less susceptible of measurement than any other kind of "mental anguish" element of personal injury.

If defendant University is found to be liable even though it is protected by the Eleventh Amendment, plaintiff will enjoy the favor of equitable remedies less drastic than that prayed for in this Motion. The University could then be made to provide him with needed tutorial services to assist him in his review or to assist him in finding employment beyond his normal expectations.

• • •

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION
ANN ARBOR

No. 82-60271

JURY TRIAL DEMANDED

SCOTT E. EWING,
Plaintiff,

vs.

BOARD OF REGENTS OF THE UNIVERSITY OF MICHIGAN,
Defendant.

HON. JOHN FEIKENS, Chief Judge

Excerpts From AMENDED COMPLAINT

[Filed November 15, 1982]

Plaintiff Scott E. Ewing, by his attorneys, complains against Defendant Board of Regents of the University of Michigan and alleges as follows:

• • •

1. Plaintiff Scott E. Ewing ("Ewing") is a citizen of the State of California with his permanent residence address at 4 Admiralty Cross, Coronado, California 92118. Ewing temporarily resides at 1320 Wisteria, Apartment B-4612, Ann Arbor, Michigan. Until dismissed, Ewing attended the University of Michigan Medical School as an out-of-state resident.

2. Defendant Board of Regents of the University of Michigan ("Board of Regents") is a body corporate existing pursuant to § 15.904, Michigan Statutes Annotated ("M.S.A."). By statute, § 15.903 M.S.A., the Board of Regents is vested with the authority to govern the University of Michigan ("University"), including the University of

Michigan Medical School ("Medical School"). The Board of Regents is legally responsible for the acts and omissions of the University and the Medical School, which act pursuant to authority granted to them by the Board of Regents.

• • •

9. Between the fall of 1975, and June 1981, Ewing completed successfully two-thirds of the Inteflex Program with a 2.8 (B–) average, having taken an authorized leave of absence from the Inteflex Program for a portion of the period. A 2.0 (C) average constitutes satisfactory academic standing.

10. As of June 1981, Ewing was a student in good standing in both the Inteflex Program and the Medical School. (Copies of Ewing's official transcripts are attached hereto and incorporated herein as Exhibit A.)

• • •

14. The Board of Regents, through the Medical School, at the time that Ewing took the NBME Part I, had a long-standing policy, practice and custom to permit any enrolled medical student to take the NBME Part I examination on at least two occasions. Only if a medical student failed the the NBME Part I at least twice would academic dismissal of the student be considered.

15. The Medical School's practice, policy and custom is exemplified by a memorandum issued by its Associate Dean which states the policy of permitting three opportunities to pass the NBME Part I prior to action resulting in dismissal. (A copy of the memorandum is attached hereto and incorporated herein as Exhibit B).

16. The policy of permitting retests of the NBME Part I is also stated in the Medical School's official publication, the *Medical Center Report*:

> . . . everything possible is done to keep qualified medical students in the Medical School. This even extends

> to taking and passing National Board exams. Should a student fail either part of the National Boards, an opportunity is provided to make up the failure in a second exam. ("On Becoming a Doctor," *Medical Center Report,* Special Issue, copyright 1981, University of Michigan, p. 30 attached hereto and incorporated herein as Exhibit C.)

17. In addition, on information and belief, the Medical School, during the period Ewing has been enrolled as a student in Inteflex, has permitted enrolled medical students a second opportunity, or even a third opportunity, to take the NBME Part I.

18. The Medical School's policy is consistent with the policy of the National Board of Medical Examiners, which prescribes that students should be given three opportunities to pass the NBME Part I.

• • •

20. Despite the existing practice, custom and policy of the Board of Regents, acting through the Medical School, to allow a medical student to retake the NBME Part I at least once, and despite the oral assurance of Dr. Reed, the Inteflex Promotion and Review Board—consisting of members of the Medical School faculty and chaired by Dr. Reed—in July 1981, removed Ewing immediately from enrollment in the Inteflex Program.

• • •

22. Under Michigan law, Ewing enjoys a property right and interest in his continued enrollment in the Inteflex Program, which would culminate in his attainment of the M.D. degree. Ewing's protectible property interest in continued enrollment pursuant to the terms and conditions of the Inteflex Program is created, at least in part, by the Medical School's guidelines, policy and practice (as exemplified in Exhibits B and C attached hereto) that any medical student

would be entitled to, at least, one retest of the NBME Part I prior to action resulting in academic dismissal.

• • •

25. The Board of Regent's actions are arbitrary and capricious since (i) they were contrary to the Medical School's policy and (ii) Ewing was offered less favorable treatment than that provided for other similarly-situated Medical School students. This conduct is in violation of Ewing's substantive due process rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution. It also constitutes a violation of 42 U.S.C. § 1983.

• • •

55. Ewing has a contractual relationship with the University. This contract entitles Ewing to remain enrolled in and to pursue studies in the Inteflex Program in accordance with all the terms and conditions of the Program, including the material term that a medical student has the right to a retest, if he or she fails the NBME Part I on a single occasion. The contract is embodied in the written catalog, brochures, policy memoranda and publications of the University, including specifically Exhibit C.

• • •

116. In deciding to take the NBME Part I examination in June 1981, Ewing relied, to his detriment, upon the stated policy, practice and custom of the Board of Regents, acting through the Medical School, that a single failure of the test was not grounds for academic dismissal.

117. Prior to taking the NBME Part I examination, Professor La Du of the Medical School told Ewing that students are permitted to take an NBME Part I retest after a single failure.

• • •

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION
ANN ARBOR

No. 82-60271

SCOTT E. EWING,
Plaintiff,

vs.

BOARD OF REGENTS OF THE UNIVERSITY OF MICHIGAN,
a Michigan Constitutional Corporation,
Defendant.

HON. JOHN FEIKENS, Chief Judge

Excerpts From ANSWER TO PLAINTIFF'S AMENDED COMPLAINT

[Filed November 30, 1982]

NOW COMES defendant, BOARD OF REGENTS OF THE UNIVERSITY OF MICHIGAN, a Michigan Constitutional corporation, by counsel, and, for purposes of this action only and for its answer by like-numbered paragraphs to plaintiff's four count Amended Complaint, respectfully represents to the Court that:

• • •

1. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation of the plaintiff's current State of citizenship, his permanent residence address, or his temporary residence address. The defendant admits that, until he was dismissed for academic insufficiencies, the plaintiff attended the University of Michigan Medical School as an out-of-state resident.

2. Defendant denies that it is a body corporate existing pursuant to § 15.904, Michigan Statutes Annotated (M.S.A.), § 390.4, Michigan Compiled Laws Annotated (M.C.L.A.) if by the use of the language "existing pursuant to", plaintiff wishes to allege that this statute is the sole source of the Regents' authority. The Board of Regents of the University of Michigan is established under the Constitution of the State of Michigan. Mich. Const. 1963, Art. 8, §§ 4 and 5. The Board of Regents of the University of Michigan is a Constitutional corporation and not a legislative corporation. The Board of Regents derives its authority to administer and govern the University of Michigan from the aforementioned constitutional provisions.

• • •

9. Defendant admits that between the fall of 1975, and June 1981, plaintiff completed approximately two-thirds of the Inteflex Program with a grade-point average of approximately 2.75 on a 4.0 grading scale. Further answering, the defendant admits that the plaintiff took an authorized leave of absence from the Inteflex Program for a portion of the period, but said authorized leave of absence was granted after plaintiff was dismissed from the University of Michigan for insufficient academic performance. Plaintiff was readmitted to the University of Michigan after his explanation that he had suffered emotional difficulties was accepted. Plaintiff was allowed to take a leave of absence only after he was readmitted. Further answering, the defendant denies that a 2.0 (C) grade-point average is the sole measure of satisfactory standing. Students with grade-point averages above 2.0 can have conditionally satisfactory academic standing if they are on academic probation. Students are regularly put on strict academic probation if they have demonstrated an inability to pass required courses on first examination, or if they have exhibited other signs that indicate that they do not deserve unconditionally satisfactory academic standing. The defendant avers that the present plaintiff, by virtue of the fact that he consistently

failed required courses or final exams, was for the greater part of his tenure at the University of Michigan only on conditionally satisfactory academic standing.

10. Defendant denies that as of June 1981, plaintiff was a student in unconditionally good standing in both the Inteflex Program and the Medical School. Defendant further answers that the plaintiff's official transcripts are not the sole measure of plaintiff's academic standing at the University of Michigan.

• • •

14. Defendant denies that at the time plaintiff took the NBME, Part I, the Medical School of the University of Michigan had a long-standing policy, practice and custom to permit *any* enrolled medical student to take the NBME, Part I examination on at least two occasions. Defendant further denies that the Medical School would only consider dismissing medical students who had at least twice failed the NBME, Part I.

15. Defendant denies that Exhibit B, incorporated within the plaintiff's First Amended Complaint, exemplifies the Medical School's policy, practice, and custom in force at the time plaintiff was a student at the University of Michigan Medical School. Exhibit B bears the date of February 23, 1982, and plaintiff was dismissed from the University of Michigan in July, 1981. Further answering, defendant avers that the memorandum attached to the plaintiff's Amended Complaint as Exhibit B by its very terms is inapplicable to the class of medical students of which plaintiff had formerly been a member.

16. Defendant denies that the publication referred to as Exhibit C in the plaintiff's Amended Complaint is an "official publication" of the University of Michigan or of its Medical School. Further answering, defendant avers that the pages referred to as Exhibit C in the plaintiff's Amended Complaint are but two pages of a much larger

publication. Defendant denies that the publication referred to as Exhibit C can be taken in any way as an official statement of the policy of the University of Michigan and its Medical School.

17. Defendant admits that during the period plaintiff was enrolled as a student in the Inteflex Program, it allowed enrolled medical students who had unconditionally good academic standing but who had failed the first administration of the NBME, Part I to retake the examination.

18. On information and belief, defendant denies that the National Board of Medical Examiners has any policy which prescribes that medical students "should be given three opportunities to pass the NBME, Part I." The informational pamphlet of the National Board of Medical Examiners contains the following statement:

> In order to achieve a passing score in a Part, two reexaminations (i.e., three attempts to pass the Part), will ordinarily be permitted any examinee provided he or she continues to meet all eligibility requirements that are applicable for the Part. [Bulletin of Information and Description of National Board Examinations, 1982, Page 18.]

Further answering, defendant denies that its medical school has any policy which by mechanical application would grant to any medical student two or three oppportunities to pass the NBME, Part I.

• • •

20. Defendant admits that the Inteflex Promotion and Review Board, after carefully reviewing plaintiff's academic record at the University of Michigan, and after taking into consideration the fact that plaintiff failed the NBME, Part I while on strict academic probation, voted to remove plaintiff from enrollment in the Inteflex Program. Defendant denies that the actions of the Inteflex Promotion

and Review Board were in any way inconsistent with its existing practices, customs and policies. Further answering, the defendant denies that the actions of the Inteflex Promotion and Review Board were in any way inconsistent with any oral assurances which may have been given to plaintiff.

• • •

22. Defendant admits that, under Michigan law, plaintiff may have enjoyed a property right and interest in his continued enrollment in the Inteflex Program. However, defendant avers that whatever interest plaintiff may have in such continued enrollment in the Inteflex Program was subject to the condition that he meet the standards of the University of Michigan Medical School for adequate academic performance. Defendant denies that Exhibit B and Exhibit C, incorporated in plaintiff's Amended Complaint, in any way state the Medical School guidelines, policy or practice. For reasons which it has set out in paragraph 15 of this Answer, defendant denies that the memorandum contained in Exhibit B is in any way applicable to the present plaintiff. With respect to Exhibit C, defendant relies on its Answer set out in paragraph 16 above. Further answering, defendant denies that it has any guideline, policy, practice, or custom which would indiscriminately allow medical students who have failed NBME, Part I on the first administration to sit for a second administration. Any policy that the Medical School might have with respect to any opportunity to sit for a second administration of the NBME, Part I is not applied mechanically. The policies of the University of Michigan Medical School are administered in conjunction with assessments of the qualification and demonstrated performance of each student to the extent such is practicable.

• • •

25. Defendant denies that the Medical School has taken any action inconsistent with its policies, guidelines and

practices or that it has acted arbitrarily and capriciously with respect to plaintiff. The defendant further answers that plaintiff was treated with all due regard for his own circumstances, and that plaintiff is the only medical student in the history of the University of Michigan Medical School to have failed the NBME, Part I on the first administration while on strict academic probation. Because plaintiff was on strict academic probation, he is not entitled to compare himself to the others who were not on such probation when they failed the NBME, Part I. Defendant denies also that there has been any deprivation of plaintiff's constitutional rights or any violation of 42 USC 1983 with respect to plaintiff.

• • •

55. Defendant denies that it has any contractual relationship with the plaintiff in which a material term would be that plaintiff has an unconditional right to sit for a second administration of the NBME, Part I after he failed a first administration of said examination. Further answering, the defendant denies that any contract it may have had with plaintiff is in any way stated or modified in the pages set out as Exhibit C in the plaintiff's Amended Complaint.

• • •

116. For reasons set out in foregoing paragraphs of this Answer, defendant denies that it had any policy, practice, or custom such as that alleged in paragraph 116 of the plaintiff's Amended Complaint.

117. In answer to paragraph 117 of plaintiff's Amended Complaint, defendant avers that Professor La Du is in no way charged with promulgating the official policies of the University of Michigan Medical School and defendant denies that any statements or representations made by Professor La Du would be binding on defendant. Defendant further answers that since plaintiff, during his tenure at the University of Michigan and its Medical School, made frequent use of the established administrative committees

for disposition of his various applications and appeals, and since plaintiff knew that promotion and dismissal decisions are made only by committees, plaintiff is himself estopped to claim that he relied to his detriment on representations or predictions of administrative disposition made by an individual.

• • •

THIRD AFFIRMATIVE DEFENSE

(Defendant Not Subject To Suit Under 42 U.S.C. § 1983)

FOR AND AS its third affirmative defense to plaintiff's Amended Complaint, defendant avers that:

Neither the University of Michigan nor its Medical School and its officials acting in their official capacities is a "person" within the meaning of § 1983 of Title 42 of the United States Code, and the defendant is therefore, and otherwise, immune from any liability to the plaintiff on account of the matters alleged in his Complaint.

WHEREFORE, defendant prays that plaintiff's Amended Complaint be dismissed with prejudice, that defendant have judgment of no cause for action, together with costs and attorney fees most wrongfully sustained.

FOURTH AFFIRMATIVE DEFENSE

(Suit Barred By The Eleventh Amendment)

FOR AND AS its fourth affirmative defense to plaintiff's Amended Complaint, defendant avers that:

Both the University of Michigan and its Medical School are agencies of the State of Michigan within the meaning of the Eleventh Amendment to the Constitution of the United States and said Amendment bars plaintiff's action.

WHEREFORE, defendant prays that plaintiff's Amended Complaint be dismissed with prejudice, that defendant

have judgment of no cause for action, together with costs and attorney fees most wrongfully sustained.

FIFTH AFFIRMATIVE DEFENSE

(Academic And Professional Privilege)

FOR AND AS its fifth affirmative defense to plaintiff's Amended Complaint, defendant avers that:

Plaintiff was dismissed from the Medical School program for reasons of poor scholarship following his repeated failure of required courses, his failure to carry a regular academic load of courses, and his failure to achieve a passing grade on the NBME, Part I. The decisions of the faculty and committees of the Medical School with respect to the plaintiff were made in the exercise of valid teaching functions. These decisions were neither arbitrary nor capricious, and the defendant's academic, clinical and professional decisions should not be displaced by the decision of a Court.

WHEREFORE, defendant prays that plaintiff's Amended Complaint be dismissed with prejudice, that defendant have judgment of no cause for action, together with costs and attorney fees most wrongfully sustained.

• • •

RELEVANT PLEADINGS

United States Court of Appeals for the Sixth Circuit

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 83-1333

SCOTT E. EWING,
Plaintiff-Appellant,

vs.

BOARD OF REGENTS OF THE UNIVERSITY OF MICHIGAN,
Defendant-Appellee.

On Appeal from the United States District Court for the Eastern District of Michigan, Southern Division (Ann Arbor)

Excerpts From BRIEF FOR DEFENDANT-APPELLEE

[Filed November 28, 1983]

• • •

[p. 14]

• • •

• • • The Medical School faculty and administrators, acting as a whole and not as individuals, are best qualified and able to exercise that judgment and their judgment should not be supplanted by any Court absent a clear and convincing showing, which plaintiff cannot make, that the plaintiff was treated in an arbitrary and capricious manner.

• • •

[p. 23]

• • • The lowness of the score, however, was not the reason for his dismissal • • •.

• • •

PORTIONS OF TRANSCRIPTS OF TRIAL TESTIMONY, held on January 10, 1983 (designated as Tr. I), January 11, 1983 (Tr. II), January 12, 1983 (Tr. III), and January 14, 1983 (Suppl. Tr.)

JAMES A. TAREN, M.D.
(Professor of Neurosurgery and Associate Dean for Education Affairs)

• • •

[Tr. I, p. 27]

Q [DIRECT EXAMINATION BY MR. CONWAY] Is it correct that a student graduating through the Inteflex Program, and a student graduating from the Standard Program receives the same Doctor of Medicine degree from the University of Michigan?

A [DR. TAREN] That is correct.

• • •

[Tr. I, p. 60]

Q Are you aware on any occasion, between 1975 and 1982, of an instance in which a student failed the NBME Part I, was not given a retest, other than Mr. Ewing?

A No.

Q Is it true that Mr. Ewing is the only student at the University of Michigan, after failing the NBME Part I, was not given the opportunity to take it again?

A Yes.

• • •

[Tr. I, p. 64]

• • •

Q And my question to you is now: Under what aegis does the Executive Committee look at the same question, whether in this case whether Mr. Ewing was to be permitted to re-take the NBME Part I?

A The Executive Committee of the medical school is a —composed of an elected faculty from both the Basic Science and Clinical Science Departments to serve for specified times, and they are appointed by the Regents, and they consider, with the Dean of the medical school, for the faculty, many matters, including curriculum, educational policies and many other matters.

Q Does the Executive Committee have, within its jurisdiction, the authority to review the decision of the Promotion Board, regarding Mr. Ewing's not being permitted to retake the NBME Part I?

A The policies of the school, with regard to the Promotion Board are in the catalogue and state that as a part of the appeal process, that the Executive Committee is a part of the appeal process——

Q And——

A —of Promotion Board decisions.

Q And that was the function in which the Executive Committee was performing in the summer of 1982 when you were involved as a member of that Committee?

A Yes.

Mr. Ewing had appealed a decision of the Promotion Board to the Executive Committee on one previous occasion, at least, to my knowledge, and was re-appealing.

Q In the summer of 1982?

A Yes.

Q And am I correct, that the Promotion Board decided —pardon me, strike that.

Am I correct that the Executive Committee decided in the summer of 1982 not to permit Mr. Ewing to re-take the NBME Part I?

A Yes.

Q. And they decided not to permit Mr. Ewing to be enrolled in the University of Michigan Medical School; is that right?

A Yes.

• • •

[Tr. I, p. 66]

Q Am I correct that Mr. Ewing's dismissal from the University had nothing to do with any Honor Code issue or violation?

A That's correct.

• • •

[Tr. I, p. 82]

Q • • • With respect to Plaintiff's Exhibit 1 in evidence, which listed the Standard students, Dr. Taren, were any of the students who had the deficiencies listed there, Student Al had 5, so forth—were any of those students on Academic Warning at the time they took the NBME Part I?

A I can't answer that from this document.

The—a student may have received a letter that would imply if their performance wasn't satisfactory, they could be dismissed from school.

Q Of your own knowledge, you don't know whether any of the Standard students listed on Plaintiff's Exhibit I had such a warning at the time he took the NBME Part I?

A No, I'm not.

Q Regardless of that, if he took the NBME Part I and failed, they were not discharged; is that correct?

A That's correct.

Q So, whether they were on Academic Warning, they were not discharged; is that right?

A That's right.

• • •

Q Other than Mr. Ewing, you're not aware of any student who was discharged for failing the NBME Part I.

A Students have been discharged for failing the NBME Part I.

Q On the first occasion, Dr. Taren?

A You're correct, with that amendment.

• • •

[Tr. I, p. 83]

Q • • • Is it true a Promotion Board automatically has on its agenda, any student who has failed the NBME Part I, or who has had any course difficulty?

A I think the agenda of the Promotion Board would consist of any student who had unsatisfactory performance.

Q And, and that would include any student who failed the NBME Part I?

A Yes.

Q On the first occasion?

A Yes.

• • •

[Tr. I, p. 84]

Q Is it true, as to the Standard Promotion Board, every time it came up on the agenda of that board, that a student failed the NBME Part I on the first occasion, that student was permitted a re-test?

A I believe that's correct.

• • •

[Tr. I, p. 90]

Q Dr. Taren, I've given you a copy of Plaintiff's Exhibit 3 in evidence, which is a photocopy of a publication, entitled "On Becoming a Doctor."

Have you seen this document before?

A Yes.

Q And it makes reference, on the title page, to Medical Center Report; do you see that?

A Yes.

Q Do you know what the Medical Center Report is?

A Yes.

Q Is it a publication of the University of Michigan?

A It is a medical—a report of the Medical Center.

Q Let me—is it the Medical Center of the University of Michigan?

A It's part of the University of Michigan.

• • •

[Tr. I, p. 100]

Q [CROSS EXAMINATION BY MR. DAVIS] • • • Are there different Promotion Boards within the Medical School?

A Yes.

Q What Promotion Boards exist?

A There are, in the Standard Program, we had a Promotion and Interim Review Board existing at that time, existing in the Basic Science Phase and also the Clinical Phase.

The Promotion Boards, in the Inteflex Program are, there is a Promotion Board for the Phase I and I think for Phase II.

When the Inteflex students move on into the Clinical Phase of the curriculum, they come under the purview of the Clinical Phase Promotion Board.

Q What is the name of that Promotion Board?

A That's the Clinical Phase Interim and Review and Promotion Board.

Q Sometimes called Phase III Promotion Board?

A The Inteflex Board might refer to it that way.

Q But, I take it that that Board has jurisdiction over students only after both the Standard student and the Inteflex student passed the NBME Part I Examination?

A That's correct.

Q Up until they take and pass the examination, they're governed by separate Boards; is that correct?

A Yes.

• • •

[Tr. I, p. 114]

Q What does the—what is the function of the Promotion Board for the Standard student curriculum?

A The Promotion Board functions in several ways: It promotes students; it reviews academic performance; it also serves in a counseling sense.

It may recommend that students take remediation for unsatisfactory performance; can drop a student from recommendation—from registration.

Q Does the Promotion Board review the academic performance and progress of every student?

A Yes.

Q And does the Inteflex Promotion Board review the academic performance and progress of every Inteflex student?

A I believe they do.

Q Now, with reference to Plaintiff's Exhibit 3 which is this pamphlet "On Becoming A Doctor," what is your

understanding, Dr. Taren, as to the reference on page 30 by Dr. Gibson to students being allowed to sit a second time to take the NBME Part I if they fail it the first time?

• • •

[Tr. I, p. 115]

Q What was your understanding what he meant by the remark?

• • •

[Tr. I, p. 116]

A • • • This refers to medical students in the Standard Program, and it refers to students, I think, who are qualified.

Q • • • All right. You don't find the word Inteflex in that discussion at all, do you?

A No.

Q Now, is this an official catalogue or bulletin of the medical school, as far as you know?

A No.

• • •

[Tr. I, p. 119]

Q [REDIRECT EXAMINATION BY MR. CONWAY] You still have Plaintiff's Exhibit 3, On Becoming a Doctor, do you, Dr. Taren?

A Yes.

Q Is it true, there is no reference to the paragraph you refer to, to the word Standard; is that right, on page 30?

A That's right.

Q And aren't medical—aren't Inteflex students students in the medical school?

A At a point, yes.

Q And that point includes the point at which they're taking the NBME Part I?

A They're counted as medical students when they enter the Basic Science Phase.

Q That's, that's in their third year?

A That's right.

Q And so it's at the end of the fourth year they're taking the NBME Part I, is that correct, for the Inteflex student?

A That's correct.

A And the sentence, the publication says, "According to Dr. Gibson, everything possible is done to keep qualified medical students in the medical school," that would apply to Inteflex as well as Standard students would it not, the term qualified student in the medical school?

A Dr. Gibson did not work with the Inteflex Program. He was Assistant Dean for Student Affairs in the Standard Program.

• • •

[Tr. I, p. 126]

Q It's true, is it not, same subject matter covered in the Standard curriculum as covered in the Inteflex student at the time student from each of the program sits down to take the NBME Part I?

A Generally, yes.

• • •

[Tr. I, p. 132]

Q I referred you to the Plaintiff's Exhibit 3 which is the publication On Becoming a Doctor and on page 30, Mr. Davis asked you some questions about your interpretation of what Dean Gibson said; do you recall that?

A Yes.

Q And am I correct that your interpretation was that the re-test rule applied to qualified students?

A Yes.

Q Now, referring to Plaintiff's Exhibit 1, are all the students Standard students on that exhibit, the 32 students listed there who were given a re-test, were they all qualified students?

A Referring to the Standard students?

Q Yes, Dr. Taren.

A I believe so.

Q And that's true even though Student Al had five deficiencies out of ten?

A Yes.

Q And that's true even though student E2 had seven deficiencies out of the ten course?

A Yes.

Q And it would be true—if I went through each student, they would be qualified students under your interpretation?

A I believe so.

Q And is it your belief that the only student who was not qualified, who failed the NBME Part I was Scott Ewing?

A Yes.

• • •

[Tr. I, p. 136]

Q And it's true, was it not, Mr. Ewing was a medical school student and had reached the Phase I medical education?

A Yes.

Q And he became that student, approximately two years before he took the NBME Part I?

A I would say yes.

• • •

[Tr. I, p. 138]

Q [RECROSS EXAMINATION BY MR. DAVIS] Prior to preparation of this tabulation in connection with this lawsuit, Dr. Taren, have you ever had occasion to prepare such tabulations in the past?

A No.

Q Was it ever important to you to compare the academic deficiencies of the students in the Standard Program with the deficiencies of the students in the Inteflex Program?

A No.

• • •

[Tr. I, p. 139]

Q • • • Why was it not important?

A These were a separate group of students, if you will, comparing apples with oranges.

• • •

Q [EXAMINATION BY THE COURT] Dr. Taren, were you in any part of the group that wouldn't permit Mr. Ewing to take the NBME Part I test the second time?

A Not initially.

Q But at sometime, did you participate?

A Yes, I participated in discussions.

Q Prior to the time that the decision was made that he should not take the re-test?

A I participated only in the discussions at the time of the petition for re-entry into the medical school. That was at the Executive Committee meetings in July of 1982 and August of 1982.

The initial Executive Committee meeting which basically dropped him from registration, I did not participate in that decision. But, my advice was sought and I did participate in the petition on re-entry.

Q Would you tell me, then as regards the petition on re-entry, what your reasons are for not having voted to permit him to come back in?

A Sir, I did not vote.

Q Well, I use vote in a broad sense. I don't mean—I mean in a decisional way.

A Yes.

I know that the faculty of the medical school relies, heavily, on the process of the Promotion Board and internal review, interim review of students, and I rely on the judgments of the Course Directors who directly evaluated the students in the courses to give the grades, and then on the judgment exercised by those Promotion Boards and on the decisions they took.

• • •

ROBERT E. REED, M.D.
(Director of Inteflex Program and Senior Associate Dean)

• • •

[Tr. I, p. 148]

Q [DIRECT EXAMINATION BY MR. CONWAY] Do both the Inteflex and Standard student take the same NBME Part I Examination?

A [DR. REED] Yes.

Q And are they scored on the same scale?

A Yes.

• • •

[Tr. I, p. 156]

Q Deficiencies in the Standard curriculum courses are not taken any less seriously than they are in the Inteflex courses, are they?

A I don't believe so.

• • •

Q Did any other student, other than Scott Ewing who failed the NBME Part I on the first occasion, have an opportunity to re-take the first test?

A Yes.

Q Mr. Ewing was the only Inteflex student who was denied the opportunity to re-take the NBME Part I?

A The NBME Part I.

Q Am I reading the Inteflex student chart correctly, some students, at least one student was given more than one opportunity?

A Yes, one student.

• • •

[Tr. I, p. 157]

Q And am I correct, Mr. Ewing's failure of the NBME Part I precipitated his dismissal from the Medical School?

A Yes, it did.

Q Now, are you aware whether or not Mr. Ewing received honors grades in the Inteflex portion of his education?

A Yes; he received one.

• • •

[Tr. I, p. 158]

Q With respect to the other students listed on the Inteflex chart, did any of those receive any honors grade during their Inteflex careers?

A No.

Q Are you aware of any research published by any of the students listed on the Inteflex student sheet of Plaintiff's Exhibit 1?

A No, they did not.

Q Did Mr. Ewing do research?

A Mr. Ewing did research, and—which was published in abstract form.

Q Turning to the other seven students, none of them published research?

A No, not to my knowledge.

• • •

[Tr. I, p. 159]

Q Then it's correct that students routinely were given a second opportunity?

A They had been, yes.

Q Would it be correct, Dr. Reed, that it was the practice of the Medical School to allow a re-test?

A Again, I'm not sure of the use of the word practice. But yes, the document we've just reviewed shows that that was the common practice.

• • •

[Tr. I, p. 163]

Q So, would it be correct to say Plaintiff's Exhibit 3 was distributed on the campus of the University of Michigan about a week or so prior to the NBME Part I Examination, in which Mr. Ewing took and failed the test?

A Yes.

Q But for the failing of the NBME Part I, would Mr. Ewing have been promoted to the clinical phase of his Medical School education?

A Yes.

Q Dr. Reed, you heard Dr. Taren testify about the concept of academic warning, academic probation?

A Yes.

Q What's the right term, academic warning, is that the term that you use?

A I don't use that term, I simply use the word warning.

Q Is the concept of that warning embodied in any written document in the Medical School?

A No.

Q Is it embodied in any document of the Inteflex Program?

A No.

Q Is there any written standard to reflect when a student is to be placed on warning?

A No.

Q The Inteflex Program never promulgated any standard for such warning?

A No.

Q Is it true that the bulletins that Mr. Davis offered into evidence don't contain anything about the concept of warning?

A Not to my knowledge.

Q The course literature for the Inteflex Program at the Medical School doesn't reflect this concept of academic warning?

A No.

Q Are you aware of any University of Michigan policy that defines, explains the definition of academic warning?

A The only one is the currently adopted Medical School policy on promotions, which directs the Promotion Board to consider whether a student has several deficiencies, and decide whether or not they should be placed on such warning.

• • •

[Tr. I, p. 165]

Q • • • Do you now have Plaintiff's Exhibit 5?

A Yes.

Q Is that the policy to which you just referred?

A Yes.

Q Isn't it true that policy became effective in the summer of 1982?

A That's correct.

Q It did not replace any written policy of which you're aware?

A That's correct.

Q Was any document supplied to Mr. Ewing which would describe, for him, what the concept of an academic warning was by way of a bulletin, course literature——

A No——

Q —University policy?

A No.

• • •

[Tr. I, p. 167]

Q Are you familiar with the concept of an academic deficiency?

A Yes.

Q Is an academic deficiency when a student fails a course, and has to re-take that course?

A It's—academic deficiency exists when a student has an unsatisfactory performance in a course, and because of that, can't go on in the curriculum.

• • •

[Tr. I, p. 169]

Q The emphasis is on the word removed, was that deficiency removed?

A Yes.

• • •

[Tr. I, p. 173]

Q • • • If you'd look at Plaintiff's Exhibit No. 9, do you recognize that document?

A Yes.

• • •

[Tr. I, p. 174]

Q Is—the word removal is used in this letter, Dr. Reed?

A Yes.

Q Is that the terminology used by the Promotion Board in dealing with deficiencies that have been remedied?

A Yes.

Q Did you, at any time, convey to Mr. Ewing that, in fact, this Neuroscience deficiency was not removed from his record, in your opinion?

A No.

Q Did you, in your own opinion, consider the Neuroscience make-up exam was to be put behind him, or did you consider it for Mr. Ewing after the NBME Part I?

A He passed that course and was going on with the Program.

Q He had not had a deficiency on the record?

A That's correct.

• • •

[Tr. I, p. 178]

Q Looking first—Plaintiff's Exhibit 6 indicates Mr. Ewing passed the courses required of him in the Inteflex Program up to the time he took the NBME?

A That's correct.

• • •

[Tr. I, p. 184]

Q Am I correctly paraphrasing the policy, the Promotion Board will review any student's performance after several deficiencies, and it's up to the Promotion Board whether the student will be warned?

A That's right.

• • •

Q Am I correct Mr. Ewing was the only student ever placed on academic warning after a single academic deficiency in the period 1975-1982?

A Yes.

Q Was it unusual to give a warning after a single deficiency?

A Yes.

Q And didn't you tell that to the Promotion Board?

A Yes.

• • •

[Tr. I, p. 188]

Q Am I correct, Mr. Ewing in the Inteflex Program, was only the person to publish research, was also the party that failed NBME Part I?

A Yes.

• • •

[Tr. I, p. 198]

Q Final sentence, it says Mr. Ewing has always acted "... [i]n a manner befitting a medical student and future physician? Is that also true?

A In his interactions with me, yes.

Q And you had very extensive interactions with him, didn't you?

A Yes.

Q You were head of the Inteflex Program?

A Yes.

Q You reviewed his Program every time it came up?

A Yes.

Q Would it be correct to say you had more contact with him than anyone else?

A Only the counselors had more, yes.

Q You were the senior person having extensive contacts with him?

A That's correct.

• • •

[Tr. I, p. 204]

Q You were present at their deliberation and so forth?

A Yes.

Q Then with respect to both the Promotion Board and the Executive Committee, is it true Mr. Ewing personality, psychological make-up and the like served, in no way, as the basis for the action of those Boards in dismissing him from the Inteflex Program?

A You say during the dismissal process, yes.

At the time he re-applied for re-admission, however, his academic record wasn't the major thing in that he was going to come back to the Medical School.

At the time and others, he introduced evidence about his character, abilities and so on. So, I would say particularly at the last Executive Committee meeting, other factors were discussed, yes.

Q They were not in any way, however, a factor whether he should be dismissed in the first place; is that right?

A Initial dismissal, no.

Q Initial dismissal, July '81 dismissal and Executive Committee review in August, 1981; is that right?

A Yes.

Q And those were the dismissals that, in fact, put Mr. Ewing out of the Program; is that right?

A Yes.

Q The 1982 events were simply his efforts to get back into the Program; is that right?

A That's correct.

Q And is it true, you do not consider Mr. Ewing to be unfit to be a doctor from the point of view of his attitude, personality or moral character?

A No.

Q You agree with me?

A Yes, I said.

Q And is it true Mr. Ewing has the intellectual ability to be a doctor?

A I believe he's demonstrated that on several occasions, yes.

• • •

[Tr. I, p. 208]

Q• • • In your opinion, is Dr. Gibson's statement that—on page 30, ". . . [a]n opportunity is provided to make up the failure in a second exam" a correct statement of what the University's practice was in 1981?

A Yes, I believe if you interpret it as I would, I would agree with it.

Q Interpreting it as you would means qualified student; is that right?

A That's correct.

Q Is it your belief everyone listed in Plaintiff's Exhibit No. 1, the 32 Standard and 7 Inteflex students were qualified students?

A Determined so by the Promotion Board, yes.

Q Mr. Ewing was only the student determined not to be qualified; is that right?

A That's right.

Q As far as you know, in the history of Inteflex insofar as taking the NBME Part I?

A Yes.

• • •

[Tr. I, p. 216]

Q [CROSS EXAMINATION BY MR. DAVIS] Dr. Reed, Mr. Ewing's score on the NBME Part I was 245, is that right?

A That's right, I believe so.

Q That was lowest score in his class?

A Yes.

Q And, in fact, the lowest score in the history of the Inteflex Program?

A Yes.

• • •

[Tr. II, p. 10]

Q It would appear he took susbtantially one hard science course per semester; is that correct?

A That's correct, as we use the term hard science, the standard pre-medical sciences.

Q Was that typical for an Inteflex student?

A No.

• • •

[Tr. II, p. 11]

Q What is the importance of taking more than one hard science course at a time?

A It requires, in order to take them at one time, it requires extra effort of focusing efforts and usually considered by Boards as evidence of ability to do just that. Boards regularly express concern if students have not performed at that level.

• • •

[Tr. II, p. 14]

Q What had his performance been on completing courses on time?

• • •

A In the first year, completed six courses; only two on time.

• • •

[Tr. II, p. 41]

Q Who attended that meeting [of July 24, 1981] of the Promotion and Review Board?

A Drs. French, Friedman, Gershowitz, Glover, Jones, Schnitzer, Youel and Zweifler.

Q Do you know whether those members of Promotion Board had any personal familiarity with Mr. Ewing?

A They did—had all been instructors with the possible exception of Dr. Glover in courses that Mr. Ewing had taken.

Dr. French was the one who taught Human Illness; Dr. Friedman taught Microanatomy and General Pathology; Dr. Gershowitz did Genetics, both taught Developmental Anatomy and Neuroscience courses.

Now, Dr. Jones in Microbiology, Dr. Schnitzer, the Pathology portion of Human Illness; Drs. Youel and Zweifler, both in Clinical Studies.

• • •

[Tr. II, p. 24]

Q How much time was spent on reviewing information that week?

A I—the Board meeting lasted, according to the minutes, an hour and a half. I think the bulk of the meeting taken up by Mr. Ewing.

The other items on the agenda were fairly routine.

Q Did they look at the entire docket on review?

A Yes.

Q Did they look at extenuating circumstances which might suggest that he should not be dropped?

A Yes.

That's the main—that's the function of that Board meeting, where the student is in that position.

Q Did the Board find anything?

A No.

Q Was the decision, at that meeting to drop, a unanimous or split decision?

A Unanimous, sir.

• • •

[Tr. II, p. 55]

Q You responded to Mr. Conway yesterday that Mr. Ewing's personality was not the cause of his being dropped from the Program?

A That's correct.

Q Was his personality or any facet of his emotional makeup at all relevant as far as the Board was concerned, for other purposes?

A Yes, very much so.

Q What was it?

A In deciding what stipulations and requirements the Board should place on Mr. Ewing in making up deficiencies and continuing through the curriculum.

Q Did the Board consider such matters with regard to other Inteflex or Standard Program students?

A Yes.

Q With what degree of frequency did the Board consider the matter?

A Almost every student—not almost every, but the majority of students that came before it.

• • •

[Tr. II, p. 58]

Q How did this inability to cope with the stress of the Inteflex Program manifest itself in Mr. Ewing, as you were able to observe?

A By inability to complete work on time; inability to accept a decision made by administrators or faculty and unsatisfactory performance in courses, and a whole series of evidence of interaction with staff and faculty that were considered by them not appropriate, not what a Standard student would do.

Q Do you find students who are unable to cope with stress receive more incomplete grades than others?

• • •

A • • • My answer is: yes, I do.

• • •

[Tr. II, p. 59]

Q Can you compare Mr. Ewing receiving an incomplete, getting an incomplete without mentioning other students' names?

A He had more than most than if not all.

Q What about inability to deal with stress which was being absent from class or an exam? Do you know if that was a problem with him?

A Yes, it was.

Q How serious a problem was that?

A It was rated quite serious by a number of instructors

who were concerned that even though his performance in class was unsatisfactory, he had not responded to counseling, coming to class more regularly or seeking help and that was viewed as a very serious matter.

Q Did the Promotion Board review that as a serious matter?

A Yes.

Q Were any of those problems discussed before Mr. Ewing was placed on Warning before he was sent the Warning Letter?

A Yes.

• • •

[Tr. II, p. 63]

Q In your opinion and judgment, should have been allowed to have opportunity to take the re-test?

A No.

• • •

[Tr. II, p. 72]

Q You had a meeting with Mr. Ewing following failing the NBME Part I that's established that you didn't think the Board would drop him?

A That's correct.

Q Do you recall why it is you might have said that, if you said that?

• • •

[Tr. II, p. 73]

A I think I can explain it in context of the meeting.

Scott came to the meeting obviously upset about the score, worried about it, his future in the Program. We discussed the fact that he would not, under the circumstances, start the clinical rotations which would come up within a week, and discussed that he should go to the Standard office and

make plans to change his schedule so they would know he wasn't going to appear.

Scott then asked me if I thought the Board, if I recall, if I thought the Board would drop him.

That moment, without his record in hand, in an unhappy discussion, I believe my reaction, the Board might consider the extenuating circumstances that Scott had described to me and give him another chance, and I answered in that light.

• • •

[Tr. II, p. 79]

Q Could you use that [Defendant's Exhibit 43] to quickly highlight how Mr. Ewing compared with the typical Inteflex student, to the point where he took the NBME Part I Examination?

A Yes.

Going through the Inteflex curriculum, the first semester, he was virtually identical except for more numbers of hours. In the winter term, first year, the standard or typical Inteflex student would have taken physics; Mr. Ewing did not.

Then, the first month of the spring term of that same year when the typical Inteflex student would have taken the Introduction to Patient Care course, Mr. Ewing was completing the work on the incomplete, on the works we discussed.

The next fall, he was on leave.

The second winter term, he was taking the courses of the first year winter term. So, at that point, was a year behind.

He entered the second year of the curriculum, then, with a year's gap in between and in the third—his third year, fall of the third year in the curriculum, he had the failure in Microanatomy and General Pathology and so dropped another year behind.

His winter term of the second year was the same as the typical Inteflex student except the bottom line on the elective that semester, he did not take an elective.

The spring term, that year, was the standard, or typical Inteflex curriculum.

In the third year of the Program, he took the typical fall term with the exception that he did not take electives which are listed at the bottom.

In the winter term of that year, as I mentioned, he took one elective rather than the typical two, and then spring term of that third year, he only took the Clinical Studies course; did not take the other two courses.

Then came back in the next calendar year and took the Microscopic Anatomy and General Pathology course with L S & A electives and then took the spring term of the two hard science courses without the Clinical Studies course because he had already taken that.

Then the fourth year of the curriculum, he took the full curriculum as described here; that being the first year in which he took, throughout the year, the same curriculum that a typical Inteflex student would take

• • •

[Tr. II, p. 81]

Q I take it however, some of his classmates, however, were terminated from the Program?

A Yes.

Q Some, before taking the NBME, in fact?

A Yes, several in fact.

Q What is the importance of students being able to go straight through, put this all together and keep on track and on time and on schedule, as far as the Promotion Board is concerned?

A Promotion Board considers it a very serious matter that students demonstrate that they can put it all together, as you word it.

Q What, if any, relevancy does that have to the ability to practice medicine after getting the M.D. degree?

A Promotion Board, it's very relevant.

• • •

[Tr. II, p. 82]

Q [If] You had an opportunity to vote in this case, how would you have voted?

A I would have voted as other members of the Board, to drop his registration.

Q Why not let him take the exam, what's the harm in that?

A The harm, the student would then take the examination with the possibility passing it and moving forward, having been found to be unqualified by our Promotion Board System.

It focuses on the examination, and I have testified that's the proximate cause. But it's similar to the proverbial straw.

You ask me did the straw break the camel's back; the answer is yes, but not by itself.

The Promotion Board, as I have said, at several meetings, indicated that Mr. Ewing to demonstrate that the problems, whatever they were that led to his performance, had been removed, and that he was now ready to go forward.

They stipulated what he must do, which is complete the remainder of Phase II of the Program without deficiencies, he did not do so.

The Board reviewed, very carefully on two occasion, his record and found no extenuating circumstances. Therefore, he did not demonstrate that he was qualified to go on.

The Board looked at the possibility of him taking the examination, again, to demonstrate qualifications and decided that that would not do it; that they had required he do it in a specified period of time and manner, and he did not meet that qualification.

My judgment is, then, that that is evidence whatever the problems were that led to the previous difficulties had not been removed, and that he is not qualified to go forward, and simply passing the Board Examination does not, then, make him qualified.

• • •

[Tr. II, p. 90]

Q [REDIRECT EXAMINATION BY MR. CONWAY] Is there anything else in Defendant's Exhibit 14 you know to be false?

A I don't believe so.

Q All right. Let's look at the Backer Cards. Are you familiar with the Backer Cards, Dr. Reed?

A Yes.

Q Backer Cards counselors write up, you rely on?

A Notes of counselors' meetings, yes.

Q And you testified you rely on these things?

A Yes.

Q All right. If you look at last entry Backer Card July '81—it's Page 5 of the Backer Card. Do you have that entry before you, Dr. Reed?

A Yes, I do.

Q Do you see the entry indicating that in July, of 1981,

the "Promotion Board voted to drop Scott Ewing from registration on two accounts," and the second one says "failure to complete two years work in three calendar years". Do you see that?

A Yes.

Q Is that entry true or false?

A That's false. I covered that in my deposition.

Q You didn't cover—you didn't indicate that to Mr. Davis when you covered the Backer Card here in court.

A I was—that was not questioned, I don't believe.

Q Was anything else false in Exhibit 14?

A I would have to look back through my deposition. Several things in here were questioned at the deposition, and I agreed there were inaccuracies at that time. Other than that, I don't believe so.

Q Do you have them in mind, Dr. Reed?

A I don't, right at the tip of my tongue.

Q Well, for example, the reference on the Backer Card number two, on the back, about Mr. Ewing being dropped from registration, and that being an erroneous drop from registration from L S & A, do you remember if that was true or false?

A That it was erroneous?

Q Yes, sir.

A Yes, it was.

• • •

[Tr. II, p. 102]

Q So, is it true everything Mr. Davis asked you, from 1975 up to 1979 did not constitute an academic deficiency as used by the Inteflex Promotion Board?

A Yes.

• • •

[Tr. II, p. 104]

Q • • • Am I correct, then, Mr. Ewing had no outstanding deficiency when he took the NBME Part I?

A That's correct.

Q Was Mr. Ewing a qualified medical student at the time he took the NBME Part I?

A Yes; he was in good standing, at that time.

Q You were asked, by Mr. Davis, about Plaintiff's Exhibit 3; do you recall this booklet?

A Yes.

Q Do you recall the quote of Dr. Gibson with respect "every qualified medical student" being given an opportunity to make up a failure in a second exam?

A Yes.

Q And at the time Mr. Ewing took that exam, he was a qualified medical student, was he not?

A At the time he entered the examination, yes.

• • •

[Tr. II, p. 108]

Q After your—all your answers to Mr. Davis' questions, is it still true, the sole grounds for dismissing Mr. Ewing were academic ones?

A Yes.

Q And weren't psychological, personality, moral, attitudinal——

A Those other things——

Q —for dismissing him?

A The final act of dismissing was failure of the National Boards.

Q But for failing that, he would not have been dismissed?

A That is correct.

• • •

SCOTT E. EWING (Plaintiff)

[Tr. II, p. 125]

Q [DIRECT EXAMINATION BY MR. CONWAY] What did you understand that to mean when you received it?

A [MR. EWING] That the deficiency had been removed.

Q Did Dr. Reed ever indicate anything contrary to what's said in Plaintiff's Exhibit 9, that the deficiency was removed from your record?

A Anything contrary to this?

Q Yes.

A No.

• • •

[Tr. II, p. 134]

Q Did either you or Dr. Reed allude to the question of whether this failure of the NBME would result in adverse action by the Promotion Board?

A Yes; I broached the subject.

Q What did you say to Dr. Reed on the subject?

A I wanted to know whether this failure would result in my dismissal.

Q And what did Dr. Reed say to you?

A He said no, it would not.

• • •

[Tr. III, p. 59]

Q [CROSS EXAMINATION BY MR. DAVIS] You would agree with me, would you not, among the fair inter-

pretation of Dr. Gibson's language on Page 30 of that pamphlet, only qualified student would be allowed to repeat the NBME Part I Examination?

A [MR. EWING] I think that that is a possible interpretation of it, yes.

• • •

[Tr. III, p. 61]

Q Is it not a fair interpretation of that language, one of the fair interpretations that Dr. Gibson has reference to qualified students?

A Yes, Dr. Gibson has referred to qualified students.

• • •

[Tr. III, p. 63]

Q Do you have any recollection of Professor Friedman asking you if you knew of the seriousness of the warnings?

A I believe he asked me for the interpretation of the meaning of those letters.

Q All right, and you said you knew the seriousness of the warnings, didn't you?

A No, I did not.

Q What did you say?

A Well, I sent a letter shortly after this on August 26th, in which I pointed out exactly what I did say.

Q No, I want to know now——

A Okay——

Q —whether you recall saying in the meeting——

A Okay——

Q —July 31, 1981, in response to Dr. Friedman's question about the seriousness?

A Okay.

I said "I consider all examinations to be important, and that I do not take any course or examination lightly; but it had never been my understanding that a single failure of the National Board Examination would lead to my dismissal."

• • •

[Tr. III, p. 146]

Q [EXAMINATION BY THE COURT] Mr. Ewing, you heard the testimony of the Defendants that in their opinion you were not qualified as a medical student after you failed the NBME Part I test, did you not?

A Yes.

Q It is factual, is it not, the score that you attained on that test was it not the lowest as it has been testified, it was significantly low, was it not?

A Yes.

Q What, about that in your view, makes you feel that you have a basis for questioning the judgment of the medical faculty as to our qualifications?

A I think that on many occasion, have demonstrated——

Q No, only talking about the test score.

The position, as I understand the faculty are taking here, through the Promotion and Review Board here and the Executive Committee hearing, that while you were qualified to take the test, the NBME test before you took it, the test demonstrated, after you took it, you were not qualified?

A Uh-huh.

Q On what basis do you disagree with that decision in view of the score that you obtained on that test?

A Well, I would say most prominently in my most out-

standing performance in the medical school after I took it——

Q No, I'm only addressing the test itself .

A In that regard——

Q I take it——

THE COURT: Let me ask this so there is no question about it.

It is factual, is it not, that when Mr. Ewing took the NBME Part I Test, he was qualified to take it?

MR. DAVIS: That's correct.

THE COURT: At that time because the faculty felt he was qualified.

MR. DAVIS: Yes, in making up those deficiencies, yes, right.

THE COURT: Yes.

Q (By the Court): I'm not dealing, talking about the scores insofar as the Defense's position is concern.

The Defense's position is the score you obtained on the NBME Part I Test was so low indicates that you were not qualified.

A Right.

Q My question, considering that, what basis do you contend, looking at that score, that you were nonetheless, qualified?

A May I talk about what occurred after the exam while I was at the medical school?

Q No, no, please—I'm not talking about anything other than your test score.

What is it you find in your test score that leads you to

believe, notwithstanding that score, you were still, nonetheless, qualified as a medical student?

A Well, of course, I passed two out of the seven subject tests. I feel that a failing score is a failing score, regardless how low it is.

I have a hard time answering your question if I'm not allowed to——

Q But, it is a question, Mr. Ewing, I have to have an answer, and I need all the help I can get.

A Okay.

May I——

Q I have to find, if I sustained your position——

A Uh-huh——

Q —that you're qualified as a medical student.

A If I could have your indulgence in a minute?

After I took the NBME Part I and failed it, I, nevertheless, went on to clinical rotation which per se, it's my experience during the—what will occur during the final two years of medical school, and also when I'm out in practice and it was while on that rotation, and just before I was dismissed and after I took this exam, that I put in my most outstanding performance and I demonstrated there, I feel through the letters of evaluation about that performance, that I'm amply qualified to be a physician. That was the point, that was after I took the exam.

Furthermore, I think that it is obvious from most of my work that I, clearly, have the ability to pass that exam, and I think that the best way to resolve this issue is simply take the exam and see if I pass and if I don't, I'm willing to walk away and that's it.

Q Would you say if you didn't pass that would be clear

evidence that you weren't qualified, if you didn't pass a second time?

A I would be willing to stand by that, yes, without any further challenge or objection.

Q Why does that make you unwilling to stand by it the first time?

A Because no other student in the history of the medical school——

Q Not talking about medical school, talking about judgment the faculty made about your being in the medical school——

A Just brought out in my testimony, I was not adequately prepared, as well prepared as my classmates when I took the exam. If given similar preparatory time, I feel that I'll do just as well as my classmates.

Q What—the contention that you're making here in this lawsuit is that the decision of the faculty, in not permitting you to take the test a second time, is arbitrary?

A Yes.

Q And the question I'm trying to probe, what's it based on is the test score that you did obtain that makes their judgment questionable, looking just at the test scores?

A Well, I don't think that it's possible to simply isolate the test score and look at it. Because, no other instance, have they looked at a single test score.

Now, whether my score was so horrendously low or not——

Q Is this your position: Even though you may not be qualified, based upon the test score that you obtained, even though you may not be a qualified medical student in their judgment, you should nonetheless be permitted to take the

test a second time to show that you are qualified; is that your position?

A No.

I believe I have demonstrated that I'm a qualified medical student.

Q And you think that the test score does not arrogate against that view?

A No, I don't.

THE COURT: All right I have no further questions.

• • •

ROBERT E. REED, M.D. (Recalled)

[Tr. III, p. 159]

Q [REDIRECT EXAMINATION BY MR. CONWAY] Turn to Exhibit 52, Dr. Reed?

A [DR. REED] Yes.

Q Is it correct Mr. Ewing's the only Inteflex Student to be dismissed because he failed the NBME Part I?

A Yes.

Q And is it also correct that all the other students on this list were dismissed at an early stage of their Inteflex career prior to the giving of the NBME Part I?

A Yes.

Q So, Mr. Ewing, of all 20, was the one progressed the furtherest and only one who took the exam and failed it?

A I believe that's correct.

• • •

[Tr. III, p. 161]

Q [RECROSS EXAMINATION BY MR. DAVIS] How many students were dropped after suffering one deficiency and failing one grade after warning?

A There were several. You want me to count them?

A Yes.

A I believe there are nine.

The last two students resigned just before the Board met to drop them. There would be 11, I believe, if those were counted.

Q Are you the author of the Warning Letter?

A Yes.

Q Same kind of letter, language used in the Letters of Warning to Mr. Ewing?

A Yes.

Q Dr. Reed, none of the students received Warning Letters after a single deficiency?

A That's correct.

Q Mr. Ewing received a warning after one deficiency?

A That's correct.

• • •

BERT N. LA DU, M.D., Ph.D.
(Professor of Pharmacology)

[Tr. III, p. 177]

Q [DIRECT EXAMINATION BY MR. CONWAY] Was it your understanding, common understanding that the students got two shots to take the NBME Part I?

A [DR. LA DU] In the seven years I remember being on the Board for regular students, I couldn't remember a single student was not given a second chance if they needed it, in other words, if they hadn't passed the first time. So, it was my understanding if they hadn't passed the first time. So it was my understanding that was a practice.

• • •

[Tr. III, p. 182]

Q So that even with Mr. Ewing's score of 235, you believe under the existing practice, he should have been allowed to retake the exam?

A On that basis, yes, and as I mentioned, probably that was way below his real qualifications, academic qualifications. At times, I think circumstances, fear and panic, that probably lowered his score in the course of his examination below his real capacity to pass, to have passed the exam the first time.

• • •

K. M. JAIRAM MENON, Ph.D.
(Professor of Biological Chemistry)

[Tr. III, p. 229]

• • • [DR. MENON] I was the Director of Biochemistry course at that time.

Q [DIRECT EXAMINATION BY MR. DAVIS] Do you remember Scott Ewing?

A Very vividly, yes.

Q Why is it you say you remember him very vividly?

A Because we had some difficulties with him in terms of taking the exams on time.

Especially I remember one particular instance where I broke a date with my five year old daughter because—the exam was scheduled on a Friday and Scott said he couldn't take that exam. I asked him when could he take it, and he said he could take it on Saturday.

I said, "What time can you come to my office?"; said in the morning, ten o'clock or so. So, I waited at ten o'clock in my office.

I was in my office, and around 11:30, he showed up and he took the exam and then I was supposed to take my daughter for lunch on that day around one o'clock or so, and exam was not done.

So, I waited, and after giving him enough time, two hours or so, I asked Scott to turn in his exam and he started arguing with me, saying we didn't put any time limit on the exam for the students when they took it another time.

So, I told him it was an hour exam, "I already gave you more than two for the exam," and he, he said "I want more time." So, I let him write as long as he wanted.

Then he told me, in the conversation, that he was sup-

posed to be a good student, he was accepted at Harvard, and I remember him very well from that time on.

• • •

[Tr. III, p. 230]

Q Are you in any way biased against him?

A No, no. I wrote that he is a good student, and passed him in the course.

• • •

[Tr. III, p. 231]

A • • • I'm sure it's a passing grade, and I also wrote he was a good student. But, I said that, general impression at that time, was that the instructors, we thought Scott's attitude was such that the world owed him a living. That's what I wrote in my evaluation.

• • •

[Tr. III, p. 234]

Q Do you believe Mr. Ewing should be allowed to repeat the NBME Part I Examination?

• • •

A It looks pretty low in all the exams here; 220, 230, 265, 175. It looks pretty bad to me.

Q • • • You think he should be allowed to complete and go on to an M.D. degree?

A If you ask my opinion, no.

Q Why not?

A Because he doesn't seem to know that much of the basic sciences on the basis of this exam.

• • •

HENRY GERSHOWITZ, Ph.D.
(Professor of Human Genetics)

[Tr. III, p. 242]

Q [DIRECT EXAMINATION BY MR. DAVIS] And had you attended the meeting of the Promotion Board which met on July 24, which is Defendant's Exhibit 9, also in front of you?

A [DR. GERSHOWITZ] This was the meeting at which Mr. Ewing—the Board voted to drop Mr. Ewing, yes, I was in attendance at that meeting.

Q All right, and what was this vote at the meeting, July 24, where the Promotion Board voted to drop Mr. Ewing from registration?

A As I recall, the vote was unanimous.

Q How much time did the Board spend before voting, discussing Mr. Ewing's record at the medical school?

A I would guess it ran on the order between an hour and a half to two.

Q Let me ask you this: How much time have you spent dealing with Mr. Ewing's situation at the University of Michigan Medical School before this lawsuit was ever filed, before you ever heard of me and before this lawsuit was ever filed?

A Personally or——

Q Personally?

A Well, most of my time involving this case has been simply as a member of the Promotion Board, and that at Promotion Board meetings I would say Mr. Ewing has consumed, as an individual, perhaps a grand total between six and eight hours of the Promotion Board's time, which

involves many people sitting, spending a total eight to—six to eight hours. That's personal man hours.

• • •

[Tr. III, p. 247]

Q Dr. Gershowitz, do you have an opinion as to whether, from your advantage point as a member of the Promotion Board, and as a Professor of Human Genetics in the Inteflex Program, whether Mr. Ewing should be allowed re-test of the NBME?

A I do not believe he should be allowed.

Q Why not?

A A number of reasons: His academic record says he is marginal in the hard sciences; his academic record suggests a—which is not necessarily the ground for voting for rejection, suggests a personality problem; his record is replete with comments from various instructors about delays, seeking exceptions, seeking special circumstances and so on.

In addition to which the scores, on this one particular—I'm sorry, only one other point, indeed, he had been formally warned that another deficiency would cause—would be ground for his discharge, dismissal from the Program.

The NBME is, indeed, a formal requirement for promotion of the Inteflex Program. No student can be promoted without having passed that and, therefore, a failure in the NBME is, indeed, a formal failure or formal deficiency on the record. This was the second deficiency, and therefore he was subject to dismissal.

The scores, themselves, the large number of areas of the examination in which he failed suggested that the—any attempt by this student to try to overcome deficiencies in what was five out of the seven or some such numbers, that many areas at one time, would be almost certainly doomed to failure.

His weak background, his academic—weak science background, his very, very abysmally poor record on the exam said this was an exercise in futility, and the Board decided there was just no point to continuing this. No extenuating circumstance, there was no reason why we should seek to allow the student to go on again.

• • •

[Tr. III, p. 250]

Q [CROSS EXAMINATION BY MR. CONWAY] Were you aware, as you sat there, Mr. Ewing is the only student in the seven year history of Inteflex who has been denied a second chance to take the Boards?

A I was not aware of that.

Q Nobody told you that the past uniform practice had been to allow students to take a second chance, did they?

A No.

• • •

[Tr. III, p. 252]

Q What's the University's policy, today, as to how many times students can take the NBME Part I Examination?

A I believe it is two with regard to the Standard curriculum. I don't know that there is a flat policy with regard to the Inteflex Program.

Q Isn't there, in fact, a faculty resolution that says you get three tries?

A That's of recent origin, very recent.

Q So, that's the current policy, is it not?

A Yes, sir.

Q Prior to that the policy was two, was it not?

A I believe it was.

Q Are you aware that each of the deficiencies that Mr. Ewing had been given during his Inteflex term, had been formally removed by the Promotion Board?

A Yes.

Q And that he'd gotten letters removing the deficiencies from the Dean stating that?

A Yes.

• • •

BRUCE A. FRIEDMAN, M.D.
(Professor of Pathology)

[Tr. III, p. 262]

Q [DIRECT EXAMINATION BY MR. DAVIS] How familiar were you with Scott Ewing?

A [DR. FRIEDMAN] He was a bit of an enigma; weren't aware of his presence until we saw his very poor school mid-term examination at which point we were looking for him.

Q What do you mean his very poor school mid-term examination?

A We did know he had a name, very poor score, and looked at his picture, neither of us recognized him. Because we hadn't taken attendance, assumed he simply hadn't come to class.

Q How low was his score on the mid-term?

A I don't have the numbers before me. There were two scores, and it was, I think, low to mid-60's which we were very troubled by. We put out the word that we wanted to see him.

• • •

[Tr. III, p. 265]

Q And what was it you wanted said to Mr. Ewing?

A That we talk about his difficulties. Best of my knowledge, he was not attending class; thought he did a poor performance on the mid-term; thought he'd best pay more attention to the course if he would come to class and put his nose to the grindstone, as it were.

Q Did there come a time you gave a final examination in the course that Mr. Ewing took?

A Yes.

Q And what was his score?

A The score, as noted in this document, was 62 on the written and 63 in the practical.

Q Is there a mean score then for the entire course?

A We took the four elements, mid-term final—added the elements, the written and practical mid-terms and finals, and the overall cumulative average was 61.7.

Q How many students were in the course?

A I don't remember the exact number; somewhere near 45, 50, something like that where he ranked. He was at the bottom.

Q Dead last?

A Yes.

Q And this was half a semester after the counseling session?

A Yes.

• • •

[Tr. III, p. 268]

Q • • • Now what was Mr. Ewing's behavior or attitude, if you will, during any one of these meetings you had with him?

A Well, he would bombard us with reams of paper and these very elaborate beautifully written documents, pointing out our failings in terms of instructors, and where we had erred in our dealings with him, and he was also extremely articulate, no questions about that.

He made some very—he was very articulate in verbalizing what his attitude was about the course and his future in medicine.

• • •

[Tr. III, p. 272]

Q • • • Will you tell the Court—and you may use this

document if you wish to refresh your recollection, Doctor, what occurred at the meeting of July 31, 1981?

A We had an introductory session in which we reviewed, again, Scott's record. He then joined the Board; talked about his record, and he then responded to a number of questions and essentially was trying to make a case why this—he thought the action of the Board was inappropriate.

Q Did you put any questions to him?

A Yes. Having seen Scott over the years, he had a tendency, I think, to selectively screen out things that he thought were favorable to himself and manipulate details.

So, I wanted to establish, very much for the record, his perception of what the Warning Letter to him meant. So, I put it to him whether he clearly understood the seriousness of this issue, and that he could be dropped from the Program before he took the National Boards.

He responded affirmatively; in fact, his voice quivered. At that time, he said he was under the gun, and he understood full well the seriousness of the matter.

I wanted to establish very clearly we had a student who understood the severity of the decision.

Q Are you certain, as you sit here, he understood he failed the NBME on one occasion, that he would be dropped from registration?

A There was no question in my mind he understood the seriousness of this, and that this Warning Letter encompassed his performance, and if he did poorly, he would—he could be—he would be dropped from registration.

• • •

[Tr. III, p. 274]

Q How much discussion, timewise, had taken place on that occasion about Scott Ewing?

A Minute numbers, two hours, could have been three hours. This was a very belabored convoluted process.

Q Was he allowed to say anything he wanted to say in support of his position?

A Absolutely. He was given free—given total ability to say whatever he wanted. In fact, he commented at length.

Q Was he allowed to submit any document he wanted in support of his position?

A I believe so. Certain hospital documents were circulated; brought some other character records from clinicians.

Q How much time do you think you spent, officially on behalf of the medical school considering Scott Ewing's various petitions and so forth over the course of his registration at the University?

A Has to be more than a hundred, hundreds of hours of my personal time; perhaps more than that.

Q Have you spent anywhere near that amount of time with respect to any other student?

A No student approaches the time I spent on him.

• • •

[Tr. III, p. 276]

Q • • • What is your professional opinion and your opinion as a member of the medical school faculty and Promotion Board as to whether Mr. Ewing should be allowed an opportunity to repeat the NBME Part I Examination?

A I'm absolutely certain I think he should be dropped from registration, not be allowed to continue.

Q How about—can you be so absolutely certain, Dr. Friedman?

A First and foremost, he's not documented any proficiency, in the subjects taken; performance in the Boards merely culminates a series of deficiencies. I can't consider that an isolation, it's one of many deficiencies.

In many ways, it's the straw that broke the camel's back. It's absolutely an abysmal performance; in my opinion, unremedial.

Q Do you have personal animosity to Scott Ewing?

A No. I think he's a remarkable young man. I think he's intelligent, very facile, writes well, certain abilities are very impressive.

Q Do you think the State of Michigan should license him as a M.D.?

A I don't think so at all. I think he has certain qualities which will militate against him being a good physician.

Q What are those?

A Well, I think first of all, the way he approaches problems. I think he has certain sets of priorities and he converts his attention to projects he happens to be interested in.

Gets short—gets galvanized activity, he scrutinizes all documents before him, looks at what he perceives to be misrepresentations and suddenly there is this jury [flurry?] of activity.

Then Scott, somehow, causes the situation to be changed, somehow a deficiency to be erased, and he starts the whole process over again, and I think this would be a damaging kind of way to treat patients.

• • •

[Tr. III, p. 279]

Q [CROSS EXAMINATION BY MR. CONWAY] So, from a course point of view, there was nothing further

required of Mr. Ewing to go on to Phase III, leaving the NBME aside?

A From a course point of view? No, he would have progressed there had the National Boards not been there.

Q So, but for failing the National Boards, Mr. Ewing would have been promoted to Phase III; is that correct?

A If that was not a requirement, are you asking would he have gone ahead?

Q Assuming he had passed the NBME, he would have been promoted?

A Yes.

• • •

[Tr. III, p. 287]

Q I've handed Dr. Friedman Plaintiff's Exhibit 9 in evidence. It's a letter from Dean Reed to Mr. Ewing regarding the removal of a deficiency?

A Um-hmm.

Q Do you see that letter?

A Yes, um-hmm.

Q Is that the form of letter that the Promotion Board approves?

A Yes.

Q Does that letter, in any way, in its text, indicate to Mr. Ewing, though the deficiency was removed, it was still being held against him?

A No, it doesn't deal with that issue, no.

Q Does it indicate a Warning Letter previously issued was still in effect?

A No.

Q As a matter of fact, quite the contrary, says the deficiency was corrected and the deficiency was removed, doesn't it?

A Correct.

• • •

[Tr. III, p. 289]

Q After each letter, got another letter saying it was removed; isn't that right?

A Correct.

Q Each time he got one of those Warning Letters before—another Warning Letter, came, got an intervening letter saying that the deficiency is removed; is that correct?

A Correct.

Q Sat down for the NBME Part I, what was left was removed, and no deficiency outstanding; correct?

A Right.

• • •

[Tr. III, p. 291]

Q But, he was otherwise qualified? If he hadn't failed the NBME, he'd be promoted; isn't that right?

A That's correct.

• • •

[Tr. III, p. 295]

Q [RECROSS EXAMINATION BY MR. CONWAY] Dr. Friedman, Scott Ewing did not say, that Promotion Board meeting, that he knew a single failure would result in his dismissal, did he?

A I didn't think he used those words, no.

Q And he didn't say words to the effect, either, that a single failure would rule in his dismissal?

A I don't think he made that phrase, no.

• • •

RALPH M. GIBSON
(Professor of Psychology in the Department of Pediatrics and Assistant Dean for Student Affairs)

[Tr. III, p. 300]

Q [DIRECT EXAMINATION BY MR. DAVIS] You say, the quotation there about repeating the NBME Part I Examination:

> "According to Dr. Gibson, everything possible is done to keep qualified medical students in the Medical School. This even extends to taking and passing National Board exams. Should a student fail either part of the National Boards, an opportunity is provided to make up the failure in a second exam."

In any of these remarks that are quoted or attributed to you in that section of the brochure, did you refer to Inteflex students?

A [DR. GIBSON] No.

Q Were you thinking about Inteflex Students?

A No.

Q What kind of students were you thinking about?

A The traditional student, again, the four year student.

This brochure was directed, primarily, to students around the country and this was, again, indicating that a qualified medical student is one who is considered by a particular Review or Promotion Board to be a student in good standing; namely a student who has passed the course work.

Q A student admitted to the Medical School Standard Program, or Inteflex, for that matter, as a qualified student, according to you, your judgment, they remain, they continue to stay qualified or can they become unqualified?

A If their performance is adequately—satisfactory.

Q If their performance is not satisfactory, then they would not be—according to your understanding, can an unqualified medical student take the NBME Examination?

A No.

• • •

[Tr. III, p. 303]

Q [CROSS EXAMINATION BY MR. CONWAY] Dr. Gibson, true, if Scott Ewing was a standard student, you knew the practice would be to get a second chance; is that right?

A I had no idea what his performance was.

Q You say standard, put on a leave of absence, put——

A If he had, at that point in time, been a student in good standing.

Q Do you have any reason to believe that the Inteflex treatment for a student who failed the NBME Part I has been different over the years?

A I have no knowledge.

Q One way or the other?

A That's right, I have no knowledge.

[Tr. III, p. 304]

Q Have you defined, qualified students to be, in your answer to Mr. Davis, a student who passed all course work?

A Student in good standing, right.

Q In defining that——

A That's right——

Q —for Mr. Davis, students passed the course work?

A Exactly.

Q In your definition, qualified student——

A To take the examination. That has been the policy of the Traditional Board.

Q So that if I—if a student had passed all course work, been a qualified student, he could take the NBME at least twice; is that right?

A Yes, um-hmm.

• • •

PORTIONS OF PLAINTIFF'S CLOSING ARGUMENT
(including dialogue with the Court)

[Suppl. Tr., p. 30]

THE COURT: I think I have to begin this inquiry with a determination, first, of what my power is, as a judge. I think *Horowitz* is instructive in that regard, is it not?

MR. CONWAY: Yes, it is, your Honor.

THE COURT: Now, if I understand the way that you set before me your propositions of law that apply, I find that you have really raised two questions: One of procedural due process and one of substantive due process.

There is little doubt in my mind that if this were a case, if this case presented a question of procedural due process, that I could deal with it; that is to say that I would have the power to deal with it.

My notion of procedural due process, in this kind of a frame of reference, would be if a medical student who is dismissed, let's say for engaging in the sale of heroin while enrolled in the Medical School and is charged with that, and then summarily dismissed before case came to trial or the truth of the allegations were proven beyond a reasonable doubt and without a hearing, was kicked out, that we would have a classic case of procedural due process.

In this case, even though I assume that, as you suggest, there is a property right or a contract right, you're not critical, are you, of the fact whatever the requirement, of the procedural process, the right to hearing, the right to appear before the faculty, the right that he was given to appear before the Promotion and Review Board initially and subsequently on appeal, that this satisfied any notion of procedural due process?

MR. CONWAY: Your Honor, we're not challenging the hearing. The only thing—and depends on the label your

Honor employs for it, it could be considered procedural due process, is that Mr. Ewing, we believe, was not on a level with anyone that failed.

THE COURT: He was given a hearing which is requisite.

MR. CONWAY: He was given a hearing which is requisite.

THE COURT: This is not a case of procedural——

MR. CONWAY: We have couched it as a substantive procedure——

THE COURT: When you get to substantive, no longer concerned with property right, liberty interest or contract rights. You're dealing with a different kind of situation, are you not?

If we're going to deal with susbtantive due process, we're going to be dealing with a question as to whether or not the medical faculty, through its committee, was arbitrary and capricious.

MR. CONWAY: That's the standard we all agree applies.

THE COURT: All right. So this is a substantive due process case?

MR. CONWAY: I agree with that.

THE COURT: Now let's look at *Horowitz* in that light. I don't know whether you have a copy of the text.

MR. CONWAY: Your Honor, I don't, I'm sorry.

THE COURT: I'm particularly interested in what the Supreme Court of the United States said about the substantive due process problem in *Horowitz*. They deal with it in a rather short paragraph, beginning at page 91 of Volume 435.

The Supreme Court said:

> "In reversing the District Court on procedural due process grounds, the Court of Appeals expressly failed to 'reach the substantive due process grounds advanced by Horowitz . . .' Respondent urges that we remand the cause to the Court of Appeals for consideration of this additional claim. In this regard, a number of lower courts have implied in dictum that academic dismissals from state institutions can be enjoined if 'shown to be clearly arbitrary and capricious.' "

Now I get into the point I think requires close scrutiny, continuing to read:

> "Even assuming that the courts can review——"

well the Supreme Court didn't say it can review, it said:

> "Even assuming that the courts can review under such a standard,"

that is, under the standard of substantive due process,

> "an academic decision of a public educational institution, we agree with the District Court that no showing of arbitrariness or capriciousness has been made in this case."

Footnote seven:

> "Respondent alleges that the school applied more stringent standards in evaluating her performance than that of other students because of her sex, religion and physical appearance. The District Court, however, found: There was no evidence that [respondent] was in any manner evaluated differently from other students because of her sex or because of her religion. With regard to [respondent's] appearance, this in and of itself did not cause her to be evaluated differently than any other students."

That's the quote from the appellate record.

Back to the opinion of the Supreme Court.

> "Courts are particularly ill-equipped to evaluate academic performance. The factors discussed in Part II with respect to procedural due process, speak a fortiori; here and warn against any such judicial intrusion into academic decisionmaking."

What do suppose that sentence means?

MR. CONWAY: Your Honor, may I respond, I think what that sentence means, your Honor, would be ill-equipped to determine what is passing, or determining whether passes, could go on on the NBME. Your Honor would be ill-equipped to determine whether a question is wrong; your honor would be ill-equipped to determine pharmacology be included in the decision, or physiology.

Your Honor is ill-equipped because the role of the court has applied objective standards.

For example, as in the *Maitland* case, determine whether the score, the grade was added up right. And here, your Honor, I respectfully submit you're not in any way invading on any academic decision. If the question here, your Honor, would be, should there be one time or two times or three times, and—to take this test——and that was a new question and the University never spoken on that question, then it might be in the area of academic decision. Here, the University made the rule already; it said two times.

THE COURT: Let me narrow the point.

I took it down, I hope I took it down verbatim. If I haven't gotten the writing the way you said it, I want you to correct me.

You said, as you wound up your argument, "We are asking your Honor to decide that Ewing is qualified to take

the test, meaning the NBME. That's as I remember your argument; is that correct?

MR. CONWAY: That's our sentiment, your Honor—I can't tell if it's the exact wording.

THE COURT: You're asking me to determine whether Ewing is qualified to take the test.

MR. CONWAY: Within the meaning of Exhibit 3.

THE COURT: Doesn't that, doesn't that impact on this statement by Mr. Justice Rehnquist, to warn against any such judicial intrusion——

MR. CONWAY: No, Your Honor——

THE COURT: —into academic decisionmaking?

MR. CONWAY: No, your Honor.

The—Dean Gibson has set out what qualified is. Qualified——

THE COURT: I heard all of that argument. Don't give that to me again, Mr. Conway.

MR. CONWAY: Yes, sir.

THE COURT: I want—not interested in what Dean Gibson said——

MR. CONWAY: Yes, your Honor——

THE COURT: —I want to know what the Supreme Court meant.

MR. CONWAY: I don't believe that does intrude, because the answer here is an objective answer. It's on his transcript, on undisputed fact——

THE COURT: Let me go on and tell you why this is troublesome?

MR. CONWAY: Yes, your Honor.

THE COURT: And just after this sentence,

> "The factors discussed in Part II, with respect to procedural due process speak a fortiori here and warn against such judicial intrusion into academic decision-making,"

there is another footnote.

Footnote is applicable, it seems to me to the arguments that are being raised here.

> "Respondent also contends that petitioners failed to follow their own rules respecting evaluation of medical students and that this failure amounted to constitutional violation under *Service* v. *Dulles* 354 U.S. 363.
>
> We disagree with both respondent's factual and legal contentions,"

and I underline the word legal, because factually, there was a contest in the case as to whether or not Miss Horowitz was really being dismissed for academic deficiency or conduct for which she engaged as a person.

Continuing with the footnote:

> "As for the facts, the record clearly shows that the school followed its established rules, except where new rules had to be designed in an effort to further protect respondent, as with practical 'appeal' that petitioners allowed respondent to take. The District Court specifically found that 'the progress status of [respondent] in the medical school was evaluated in a manner similar to and consistent with the evaluation of other similarly situated students, with the exception that [respondent] docent . . . went to even greater lengths to assist [respondent] in an effort for her to obtain her MD degree, than he did for any of his other students."

Then comes this interesting sentence:

> "As for the legal conclusion that respondent draws," and that legal conclusion is the one that the court referred to earlier by saying it disagreed with both respondent's factual and legal contention, continuing,
>
> "[b]oth *Service*"—that's the case of *Service* v. *Dulles* —and *Accardi* v. *Shaughnessy* . . . "*Service* relied, enunciate principles of federal administrative law rather than of constitutional law binding upon the States."

Doesn't that footnote mean to say that even where you may have a situation in which the Medical School, in a decision with regard to the academic qualifications of a student does not follow its own rules, that is still no area for judicial intrusion?

MR. CONWAY: No, your Honor, I don't believe so. I think——

THE COURT: How else do you explain that language, then?

MR. CONWAY: Well, your Honor, first in the context obviously while the court's comment is as you read it, it made an earlier finding there was no factual difference——

THE COURT: And legal——

MR. CONWAY: I understand——

THE COURT: But when it said it was no legal basis, and said this was not a constitutional violation, was it saying that you can't make an argument that the medical faculty failed to follow its own rules when they are making decisions in the area of academics?

MR. CONWAY: Your Honor, I don't believe so, and the reason is——

THE COURT: Give me some reasons for not believing so.

MR. CONWAY: Yes, your Honor.

Because the nature of the relationship is that there is a contractual relationship here. They——

THE COURT: We're not dealing with contractual or property relationships now, we're not in procedural due process.

We're talking about whether or not a decision to drop a medical student, made by a faculty, can be arbitrary or capricious?

MR. CONWAY: Your Honor, if the broad meaning——

THE COURT: And if the difference is in the area of academic decisionmaking, doesn't *Horowitz* say, to the lower courts, "You'd better go very, very carefully there before you decide even if the faculty was wrong, even if the faculty was wrong, you'd better go very carefully before you decide to substitute your own judgment for that of the faculty"?

Isn't that what that says?

MR. CONWAY: Your Honor, as your Honor knows, the Standard of arbitrary and capricious is a high Standard and a difficult one to meet, and I think that that's how the court is telling the lower court to go easy. Because, your Honor, were it not so, then the court would need not have to assume that there could be a cause of action, and *Stevens* v. *Hunt*——

THE COURT: That's what *Stevens* said. You see, that's the interesting thing about it. They said even assuming that the courts can review under such a Standard, an academic decision.

Justice Rehnquist did not say we can review such a Standard. Said even if we assume that, there was no showing of arbitrariness and capriciousness.

Now, one of the concurring justices, I don't know, Mr. Justice Marshall—no, I think it was Mr. Justice White. But in any event, one of the justices who concurred, said, "Look, since the Circuit Court of Appeals never got to that issue, let's send it back, let them decide this."

You remember the court said they failed to reach a decision on that ground.

MR. CONWAY: Yes, your Honor.

THE COURT: What I'm really wondering is this: Can *Horowitz* be read to say that even if the faculty does not make the right decision, even if the faculty makes to us what would appear to be, obviously, a wrong decision where it is in the field of academic decisionmaking, there, we have to allow the faculty to make that decision. The courts cannot intrude even if it's dead wrong.

MR. CONWAY: Your Honor, I don't believe it can be read to say that.

• • •

[Suppl. Tr., p. 48]

[THE COURT] • • • Now let's assume, against that background for a moment, that *Horowitz* does not go as far as I suggested, and that it may not be read to say under all circumstances, no matter how wrong, if it's in the academic area and a faculty decides against a student, that's tough, but we'll support academia willy-nilly; whatever they decide, that's good enough, let's not go that far for a moment. Maybe *Horowitz* doesn't go that far, although the language is rather sweeping.

Supposing *Horowitz* is read to mean that if the faculty decides, in an individual student's case, that that student

is not qualified to be a medical doctor, that—if that decision is arrived at in some rational way, then it doesn't matter what that faculty decides is the situation as to any other medical student, even if it decides that differently as to 39 other students.

The nub of that particular point being, that what the faculty is doing is deciding, in each instance, the individual student's case, and that has no reference to any decision with regard to any other student's case. Each is decided on the merits of the individual's own case.

Now if, in making such a decision, the faculty says, "We do not believe under the totality of this particular student's circumstances, that this student is qualified to be a medical doctor, or to take a retest, or to continue as a student in good standing in this school, and there are some rationalities behind that decision," are you saying that federal judges can substitute judgment for medical faculties in that regard?

What expertise do I possess to do that?

MR. CONWAY: Your Honor——

THE COURT: I only know Mr. Ewing from having been here three days.

MR. CONWAY: Yes, your Honor, and I see——

THE COURT: Not here every day, and Dr. Reed, Dr. Taren, Dr. Gibson, Promotion and Review Board, Dr. Friedman—Dr. Friedman said he spent over 100 hours; I think Dr. Reed spent more time than that.

Certainly been a connection been the faculty and Mr. Ewing over the last seven years, and here are men who are at the head of a faculty and they make a decision that this man, under all of the circumstances, is not qualified, and they have some reason to support that, can I say, "No,

those reasons aren't any good, I'll substitute my own judgment for theirs"?

MR. CONWAY: Your Honor has posed many questions to me. If I can address them, if we were dealing as *Horowitz* dealt with a subjective academic decision, then I would agree with your Honor.

THE COURT: But aren't we dealing with that?

MR. CONWAY: No, dealing with objective standards.

THE COURT: No, no, you can't call a rose by another name here——

MR. CONWAY: Well, your Honor——

THE COURT: You said to me, "We are asking your Honor to decide that Ewing is qualified to take the NBME."

MR. CONWAY: Qualified under the standard they have promulgated.

THE COURT: Changed it a bit, but——

MR. CONWAY: We——

THE COURT: The question is one of academic decision-making, is it not? Qualifications meaning academically qualified?

MR. CONWAY: Academic——

THE COURT: He wasn't bounced out because of any other reason?

MR. CONWAY: That goes to the other point that your Honor said. Dr. Reed said——

THE COURT: You made a big point to show he was not thrown out because of his morals, he was not honorable person, or because of any psychiatric problem——

MR. CONWAY: Your Honor, I think——

THE COURT: —or any personality problem.

MR. CONWAY: Yes, your Honor.

THE COURT: Then what was he thrown out for?

MR. CONWAY: Thrown out for failing that test.

THE COURT: Academically?

MR. CONWAY: Yes, your Honor.

THE COURT: Okay.

• • •

[Suppl. Tr., p. 54]

THE COURT: I suggest maybe I haven't made my question clear to you.

MR. CONWAY: I'm sorry.

THE COURT: You're talking to something I didn't have in mind.

I'm suggesting that if there is a rational basis for the faculty making a decision in an individual student's case that this student is not qualified, no matter what it does in regard to all other students, whether it gave a second chance—one instance we know a third chance—that that decision may be made as to an individual student on a case-by-case basis, and not with reference to all of the other actions that they took with regard to all of the other students. That's what I'm focusing on.

If that individual decision is supported rationally, then, do I have the power to go in and say to the faculty, "No, you made the wrong decision in that case because look at all the decisions you made over here?"

Now, the trouble with what you're suggesting or at least the trouble you give me by suggesting it, maybe you can remove my difficulty, is that it seems I have to know every-

thing about all the other cases too before I could decide whether or not they did what they did in the Ewing case, they did what they did in all the other case; isn't that so?

MR. CONWAY: No. Your Honor put in the question, assumption decision is rational. My response——

THE COURT: They had some reason——

MR. CONWAY: Well your Honor, having reason and rational basis, two things as your Honor knows, and——

THE COURT: If there is a reason—let's lay that ghost to rest.

If you're going, if you're going to raise the point what they did was irrational, then I would like to know why, and I will use your own terminology.

You talked about a person being on probation.

MR. CONWAY: Yes, your Honor.

THE COURT: Now, I face that frequently.

MR. CONWAY: Yes, your Honor, I know you do.

THE COURT: We—even though convictions, particularly in the case of youthful offenders are set aside, the fact of the conviction can never be erased even though legally, a youthful person has the conviction expunged, so-to-speak. There is no question but that the fact the youthful offender committed that offense remains.

In this particular case, since you used that analogy, the thought that occurred to me is this: Even though Mr. Ewing made up his deficiencies, the faculty was not irrational in remembering the great difficulty that he had in making them up, was it?

MR. CONWAY: Well it was, I think, unfair not to tell Mr. Ewing it would——

THE COURT: Oh, come on, Mr. Conway. Mr. Ewing knew as much as the faculty did, he knew the difficulty.

MR. CONWAY: We had the removal letter, your Honor——

THE COURT: You mean the faculty goes around the Medical School and say, "Look, everyone's deficiency is removed, keep in mind the fact that you have all the trouble——"

MR. CONWAY: They didn't have to send the letter at all, your Honor, didn't have to tell him the deficiency was removed.

THE COURT: Let's go back to my point.

MR. CONWAY: Your Honor, the point——

THE COURT: Assume—if you don't want to agree with me I can understand that.

MR. CONWAY: Yes, your Honor.

THE COURT: The basis for making a decision in Ewing case, assuming there was some rational basis for the faculty making the individual decision that they did in Mr. Ewing's case to be terminated because he flunked the NBME, cannot that be a decision supported by some rational basis, Standard separate from any other decision that it makes? That's really what I'm getting at.

MR. CONWAY: Your Honor, as you posed it, I'm sure there is an instance where that can happen. I think your Honor, what you have to consider in terms of rational, how they treat everybody.

THE COURT: I'm asking you, can I not disregard what they did for everybody else?

MR. CONWAY: All right.

Your Honor, you can focus on his case. But focusing on his case alone, I don't believe from the facts in this record, it is a rational decision. Mr. Ewing was under—forget—assume for a moment, your Honor, no other student had failed the NBME, assume that for a moment.

THE COURT: All right.

MR. CONWAY: But given the publication, Plaintiff's Exhibit 3, which states their practice, given what all the faculty members said, single rule never come up, but this was the rule that had already been promulgated, that you get a second chance, that it would not be rational not to give him a second chance, and that's leaving aside the other 39, assume they never happened. I don't think it can be rational as to Mr. Ewing not to give him a second chance when that was the forestated policy.

THE COURT: All right.

Let's state that because I think you posed the question better than I did.

If that's a better way, assume the other 39 didn't happen, assume Mr. Ewing is an isolated single case?

MR. CONWAY: Yes, your Honor.

THE COURT: Doesn't *Horowitz* teach that in that area, judges should not intervene——

MR. CONWAY: No——

THE COURT: —for academic reasons faculty decides, "We're not going to give this man another chance to take the test, in our judgment——"

MR. CONWAY: Yes, your Honor——

THE COURT: —then, judges, that something you can't——

MR. CONWAY: I don't believe—on the facts of *Horowitz* when there was no predetermined rule, I agree with you, your Honor. But the fact is——

THE COURT: The contention, there were, and the court said specifically in footnote eight, "These predetermined rules are not going to govern——"

MR. CONWAY: There were no objective standards as there were here.

What we're dealing—not taking Mr. Ewing's essay exam and you reading it and see if you give a different grade than Dr. Reed or Professor LaDu. Those are academic decisions. Academic decisions at the outset to say how many times you get to flunk a course, you're out, got to make it up. Those are academic decisions.

Your Honor, I would not suggest to your Honor—I know your Honor would be loathe to go in and supervise those decisions. The academic decision was made in advance, your Honor, the academic decision you would get two chances, and if he were given the two chances, your Honor, as we say the rule was in advance, then we couldn't ask your Honor, for example, to say give him three chances, give him four chances, give him as many as he needs.

THE COURT: You see, the trouble with that, or the difficulty I have with that, even if I assumed, faced up to that there was such a rule that everybody gets two chances, I have some difficulty whether or not that's the rule.

But even assuming that to be the rule, then what you're saying is there can be no academic decisionmaking in any instance to withhold that from any one student. Everybody gets two chances.

MR. CONWAY: The second test?

THE COURT: Yes.

MR. CONWAY: Yes, your Honor. Academic decision, he had not made up pharmacology——

THE COURT: I suppose anybody comes along—not Mr. Ewing, he's going to live or die by the second test if granted.

Somebody come along and said wanted a third test which was given one student, and therefore now rule at the Medical School there are three times?

MR. CONWAY: Well, your Honor—that—that question has a problem in it because, factually, that is the rule now. But leaving that aside, your Honor, I don't think the testimony would support that. your Honor has to make a factual determination what's the rule, and Dr. Reed testified, two, three for extenuating circumstances and the like.

Your Honor, what we are saying there can be many academic decisions your Honor can't make, whether make them uniform, whether Professor LaDu's right. Here's an objective standard, in advance, promulgated. Mr. Ewing relied on it. And he—it's not being followed, it's not an academic decision, I respectfully suggest.

Kicking Mr. Ewing out because of his attitude, because of his mental state something of the like, the vehicle said that's the honor code.

THE COURT: I understand there is an apple you don't want to bite into. But, there is a decision the faculty has to make, or as to the record presented in this case, I'll have to decide that, that before he can take the NBME a second time, they have to find under all the circumstances, he's qualified to take it and their decision, he's not.

Now, can I intrude into that decision even if I find that the rule is that for all qualified students, they get a second chance?

MR. CONWAY: Well——

THE COURT: Don't you see what I'm driving at?

MR. CONWAY: I do, your Honor. I guess——

THE COURT: How do you answer that?

MR. CONWAY: If your Honor were to find that the rule, in this case, on the evidence, is that the faculty can take everything into account and it was not the fact that Mr. Ewing was dismissed because he failed this exam, but it was for other things, that he didn't make up pharmacology or something of the like, then, then if they had a rational basis for that rule, then your Honor would not set it aside.

But I think, your Honor, the evidence doesn't support that's what it was because Dr. Reed said he was qualified when he took it with and what made him unqualified, he didn't pass the exam.

• • •

[Suppl. Tr., p. 79]

THE COURT: What I'm getting at it—do I understand correctly that the evidence shows, if it shows this, that as to each one of the students who were permitted to take the NBME a second time, that there was, first, a meeting of the Promotion and Review Board whether they applied to a Standard medical student or Inteflex student and a judgment was made to permit that student to continue?

MR. DAVIS: I think that the evidence does show that certainly, that's what happened——

THE COURT: Where, in the evidence, is that shown?

MR. CONWAY: I think Dr. Reed's testimony. If not Dr. Taren, I think it was Dr. Reed.

THE COURT: If I go back and look at Dr. Reed's testimony, do you agree with that Mr. Conway, that such judgments were made——

MR. CONWAY: Well, your Honor, I agree that the Promotion Board had it on their agenda. I disagree judgment was made because Dr. Reed testified it was routine procedure.

THE COURT: Well, whether or not the judgment was routine or not——

MR. CONWAY: He didn't use the word judgment, came before the Board——

THE COURT: Let's use some other word.

MR. CONWAY: All right.

THE COURT: What do you want to use, decision?

MR. CONWAY: Your Honor, I don't—all I can—words that he used——

THE COURT: Without——

MR. CONWAY: Yes——

THE COURT: —without clothing with dignity and judgment, I don't mean to put emphasis on that, was there an event that occurred prior to the time the student took the NBME the second time, and was that even some kind of a deicsion by the Promotion and Review Board that the student could continue?

MR. CONWAY: The student was permitted to continue by the Promotion and Review Board, and continued—I don't know—we don't have evidence what kind of decision-making process it was.

It's true it came before the Promotion and Review Board and before the time the student could retake the exam. But, I don't think there is any evidence in terms what the Promotion and Review Board did when that student's name came up, that there was any consideration, the student was evaluated or the like.

THE COURT: One way or other?

MR. CONWAY: I don't think there's any evidence on that at all. It is a fact, by the testimony, that it did come up in the Promotion and Review Board.

THE COURT: In this instance, in order to grant the relief you seek, I would have to make a decision first in that area, would I not?

MR. CONWAY: I think the decision is it was routinely done.

THE COURT: No——

MR. CONWAY: Routinely done——

THE COURT: No, no, no——

MR. CONWAY: I think it was a record keeping process.

• • •

[Suppl. Tr., p. 82]

[THE COURT] • • • In order for Mr. Ewing to take this examination the second time, something has to happen; he has to be a student good standing——

MR. CONWAY: He has to be—I think the term is an enrolled student.

THE COURT: That requires a decision on my part?

MR. CONWAY: Whether he should be an enrolled student, your Honor, yes, your Honor.

THE COURT: So that the relief you seek, injunctive order seeks two parts: First, that he be placed back in the Medical School as an enrolled student, right, and secondly, that he be permitted to take the examination?

MR. CONWAY: For purposes of taking the exam, yes, your Honor.

• • •

EXHIBITS INTRODUCED INTO EVIDENCE AT TRIAL

JOINT EXHIBIT 1

STIPULATION

Plaintiff, SCOTT E. EWING, and defendant, BOARD OF REGENTS OF THE UNIVERSITY OF MICHIGAN, by their attorneys, stipulate to the accuracy only of the following facts:

1. The answers to interrogatories given by defendant (marked as Plaintiff's Exhibit 1) identify all students enrolled in the University of Michigan standard curriculum and all students enrolled in the Inteflex Program who failed the NBME Part I since 1975 and were granted permission to retake the NBME Part I. These answers also reflect other academic information about each such student.

2. Other than Scott E. Ewing, none of the Inteflex students listed in Plaintiff's Exhibit 1 received an honors grade in any medical school course. Two of the 32 standard curriculum students listed on Plaintiff's Exhibit 1 have received an honors grade.

3. Other than Scott E. Ewing, none of the Inteflex students listed in Plaintiff's Exhibit 1 published any medical research prior to taking the NBME Part I examination. Three of the 32 standard curriculum stndents have engaged in medical research prior to taking the NBME Part I.

4. With respect to Column 4 of Plaintiff's Exhibit 1 (pages 1-6) relating to standard curriculum students, the number indicates the number of academic courses taken by each standard medical student in which the student either failed the course or had to repeat the final examination for academic reasons. The total number of courses taken by such students prior to sitting for the NBME Part I ranged

from 10 to 13 courses. The total number of courses taken by Inteflex students prior to sitting for the NBME Part I was either 22 or 23 courses.

/s/ PETER A. DAVIS
January 10, 1983

/s/ MICHAEL M. CONWAY
January 10, 1983

PLAINTIFF'S EXHIBIT NO. 1
(Chart Derived from Defendant's Answers to Interrogatories)

STANDARD STUDENTS

Identifying Symbol or Description of Each Student	Number of Times Each Student Was Permitted to Take the NBME Part I	Dates on Which NBME Part I Was Taken	Number of Academic* Courses In Which Each Student Had Received Final Grade of "D" or "E"
A1	3	6/76 9/76 9/77	5
B1	2	6/75 9/75	1
B2	2	6/76 9/76	3
C1	2	6/75	4
C2	2	6/75 9/75	2
D1	4	6/75 9/75 6/76 9/76	3
D2	2	6/76 9/76	0
D3	2	6/76 9/76	2
D4	2	6/76 6/79	4

*D or E grades are not used for standard students in the curriculum. The numbers in this column represent courses in which the student was required, for academic reasons, to take a make-up examination or repeat the course

STANDARD STUDENTS

Identifying Symbol or Description of Each Student	Number of Times Each Student Was Permitted to Take the NBME Part I	Dates on Which NBME Part I Was Taken	Number of Academic* Courses In Which Each Student Had Received Final Grade of "D" or "E"
D5	2	6/76 9/76	4
D6	2	6/76 9/76	4
E1	2	6/76 9/76	3
E2	2	6/76 9/76	7
E3	2	6/76 9/76	1
E4	2	6/76 9/76	1
E5	2	6/76 9/76	0
E6	2	9/80 5/81	5
F1	3	6/77 9/77 6/78	0

*D or E grades are not used for standard students in the curriculum. The numbers in this column represent courses in which the student was required, for academic reasons, to take a make-up examination or repeat the course

STANDARD STUDENTS

Identifying Symbol or Description of Each Student	Number of Times Each Student Was Permitted to Take the NBME Part I	Dates on Which NBME Part I Was Taken	Number of Academic* Courses In Which Each Student Had Received Final Grade of "D" or "E"
F2	2	6/77 9/77	3
G1	3	6/79 9/80 2/81	4
G2	3	6/79 9/79 6/80	3
G3	3	6/79 9/79 6/80	5
H1	2	6/79 9/79	0
H2	3	6/79 9/79 6/80	0
H3	2	6/80 9/80	1
H4	3	6/79 9/79 6/80	3
H5	2	6/79 9/79	0

*D or E grades are not used for standard students in the curriculum. The numbers in this column represent courses in which the student was required, for academic reasons, to take a make-up examination or repeat the course

STANDARD STUDENTS

Identifying Symbol or Description of Each Student	Number of Times Each Student Was Permitted to Take the NBME Part I	Dates on Which NBME Part I Was Taken	Number of Academic* Courses In Which Each Student Had Received Final Grade of "D" or "E"
I1	2	6/82 9/82	3
I2	3	6/81 9/81 6/82	0
I3	3	6/81 9/81 4/82	0
J1	2	6/82 9/82	3
J2	2	6/82 9/82	0

*D or E grades are not used for standard students in the curriculum. The numbers in this column represent courses in which the student was required, for academic reasons, to take a make-up examination or repeat the course

INTEFLEX STUDENTS
(includes only Program courses)

Identifying Symbol or Description of Each Student	Number of Times Each Student Was Permitted to Take the NBME Part I	Dates on Which NBME Part I Was Taken	Number of Academic Courses In Which Each Student Had Received Final Grade of "D" or "E"*	Existence of Other Academic Deficiencies (including Incompletes Grades and Retests of Final Examinations **	Total Number of Courses With Academic Problems ***
A1	2	6/77 9/77	1	no	1
A2	2	6/77 9/77	2	no	2
A3	2	6/77 6/78	5	yes	9
A4	2	6/77 9/77	2	no	2
B1	2	6/77 9/77	0	yes	1
C1	1	6/81	1	yes	3
D1	2	6/82 9/82	3	yes	4
D2	3	6/81 9/81 6/82	2	no	2

* D or E grades are only used for courses credited by LSA toward the Bachelor's Degree

** I (incomplete) grades have been used for both academic and non-academic reasons

*** refers to courses in which student was required to make-up examination or repeat a course for academic reasons

PLAINTIFF'S EXHIBIT No. 1—continued

MICROANATOMY AND GENERAL PATHOLOGY 506

Winter 1979: Three students received an E and all were required to repeat the course. The raw scores for these three students were:

Student A: 63.2%
Student B: 62.3%
Student C: 61.7%

Winter 1980: Four students received a D grade and were given make-up examinations. No students received an E grade. The raw scores for these four were:

Student A: 68.4%
Student B: 66.4%
Student C: 65.9%
Student D: 64.6%

PLAINTIFF'S EXHIBIT NO. 3

("On Becoming A Doctor"—Publication)

Excerpt

• • •

[p. 30]

IS THERE A DOCTOR IN THE HOUSE?

• • •

According to Dr. Gibson, the support services offered fall into four areas: (1) help in the development of appropriate and effective study skills, (2) tutorial assistance, (3) counseling, and (4) mental health guidance. So highly regarded are these services that at least half of the medical students make use of one or more of them during their years in the Medical School.

Dr. Gibson also points out that, in addition to problems arising from the stress of high-level competition, there is a tendency on the part of some medical students never to show weakness. They tend not to communicate their fears or failures either to their peers or to their family. Instead, they suffer in silence, which can create debilitating depression.

According to Dr. Gibson, everything possible is done to keep qualified medical students in the Medical School. This even extends to taking and passing National Board exams. Should a student fail either part of the National Boards, an opportunity is provided to make up the failure in a second exam.

Very little is left to chance, says Dr. Gibson, and the conscientious, qualified student need never feel "lost," given the support services that are available. Through the study skills and tutorial offices, a student experiencing difficulty can be instructed in such essential matters as effective note taking and proper study habits. Copies of old exams

are readily available to all students, and they are encouraged to study them carefully to gain a clear understanding of the nature of medical school exams and the criteria used for grading and evaluation.

• • •

MEDICAL CENTER REPORT

The *Medical Center Report* is published by The University of Michigan Medical School and the Office of Health Sciences Relations. Copies are available without charge to Medical Center alumni, faculty, students, staff and friends.

• • •

Published 1981.

PLAINTIFF'S EXHIBIT NO. 9

January 26, 1981

Mr. Scott Ewing
1010 Catherine, #203
Ann Arbor, MI 48104

Dear Mr. Ewing:

The Inteflex Phase II Promotion and Review Board at its January 12, 1981 meeting was pleased to learn of the removal of your Neuroscience 509 deficiency.

The Board joins me in expressing best wishes for continued success in the program.

Sincerely yours,

/s/ Robert E. Reed, M.D.
Associate Dean
Director, Integrated
Premedical-Medical Program

PLAINTIFF'S EXHIBIT NO. 14
Excerpt

November 25, 1981

Dr. W. Lindsay Ogilvy
Dean of Admissions
Faculty of Medicine, McGill University
McIntyre Medical Sciences Building
3655 Drummond Street
Montreal, Quebec, Canada H3G 1Y6

Dear Dean Ogilvy:

Mr. Scott Ewing has asked that I write a letter regarding his application for transfer to your school. In the Fall of 1975, Scott entered The University of Michigan in the Integrated Premedical–Medical Program (Inteflex). This Program is a joint offering of the College of Literature, Science and the Arts and the Medical School. Each year, 50 outstanding high school seniors are admitted to the curriculum which leads, in six years, to the receipt of both the Bachelor's of Science and the M.D. degree. Scott entered with an outstanding high school record as one of ten out-of-state students selected that year—out-of-state students need to be highly competitive in order to obtain one of the limited positions available. Scott completed the first two years in three calendar years, being on leave for one year. After returning from leave, Scott performed in an excellent fashion and was awarded class honors for scholastic achievement in the 1979-80 year by the College of Literature, Science and the Arts.

• • •

It should be noted that Scott's academic record in the four-year preclinical portion of the Program was compiled in the Inteflex curriculum, a major portion of which was in Medical School courses in the basic medical sciences. These courses are graded by the Medical School Honor/Pass/Fail

system but because they are credit in the College of Literature, Science and the Arts towards the bachelor's degree, letter grades are also assigned. These grades were therefore achieved in competition with the small, highly-select Inteflex group in classes taught and graded at the Medical School or graduate level. Students are considered in good standing if a 2.0 grade point (C) average is maintained. His record, therefore, should not be compared with a standard undergraduate pre-medical transcript.

At the end of the fourth year, students in the Inteflex Program take a three-week Introductory Clerkship course in which the clinical skills of history taking and physical diagnosis are integrated as students do complete histories and physicals and discuss them with a special faculty. Scott was awarded Honors for this course, which was completed prior to the Promotion Board meeting, with highly complimentary comments from the faculty regarding his performance there.

During his time in the Program, Scott has been quite active in extra-curricular activities and research. He received a medical student research fellowship in the Summer of 1978, working with Dr. Golder Wilson of our Pediatrics department on Restriction Endonuclease *Eco* RI. Scott's work was selected for presentation at the Tenth Annual Midwest Student Research Forum and an abstract of his work has been published in *Clinical Research*. Scott is an accomplished writer and has won two Hopwood awards in The University of Michigan creative writing contests. In 1979 he won an underclass award and during this past year won a major award for the first half of a book. The judges for this work described it as "so impressive both in scope and self-insight that it is clearly the winner—the final section is eloquent and moving".

• • •

• • • I should stress that the Board's action was not taken because of unethical or dishonest behavior nor were his intellectual capabilities in question. In his interactions with me, Scott has always been sincere, appropriately concerned with his standing in the Program and behaved in a manner befitting a medical student and future physician.

Sincerely,

/s/ Robert E. Reed, M.D.
Associate Dean
Director, Integrated
Premedical–Medical Program

PLAINTIFF'S EXHIBIT NO. 18

(Chart Derived from Defendant's Supplemental Answers to Interrogatories)

STANDARD PROGRAM STUDENTS Page 1 of 2

IDENTIFYING CODE	DID STUDENT PASS NBME PT. I EXAM	# BASIC SCIENCE COURSES SUCCESSFULLY PASSED	# BASIC SCIENCE HONOR GRADES	SPECIAL AWARDS–HONORS RESEARCH ACTIVITY	WAS STUDENT PERMITTED TO BEGIN CLINICAL PHASE
A1	No	10	0	No	No—Terminated
B1	Yes	11	0	No	Yes
B2	No	10	0	No	No—Terminated
C1	No	10	0	No	No—Withdrew
C2	Yes	10	0	No	Yes
D1	Yes	10	0	No	Yes
D2	Yes	10	0	No	Yes
D3	Yes	10	0	No	Yes
D4	Yes	10	0	No	Yes
D5	Yes	10	0	No	Yes—Withdrew to Transfer
D6	Yes	10	0	No	Yes
E1	Yes	10	0	Yes—Summer Research	Yes
E2	Yes	10	0	No	Yes
E3	Yes	10	0	No	Yes
E4	Yes	10	0	No	Yes
E5	Yes	10	0	No	Yes

IDENTIFYING CODE	DID STUDENT PASS NBME PT. I EXAM	# BASIC SCIENCE COURSES SUCCESSFULLY PASSED	# BASIC SCIENCE HONOR GRADES	SPECIAL AWARDS–HONORS RESEARCH ACTIVITY	WAS STUDENT PERMITTED TO BEGIN CLINICAL PHASE
E6	Yes	10	0	No	Yes
F1	Yes	11	0	No	Yes
F2	Yes	11	0	No	Yes
G1	Yes	10	0	No	Yes
G2	No	11	0	No	No—Terminated
G3	Yes	11	0	No	Yes
H1	Yes	10	0	No	Yes
H2	No	10	1	No	No—Terminated
H3	Yes	12	0	No	Yes
H4	No	10	0	No	No—Terminated
H5	Yes	10	0	No	Yes
I1	No	14	0	No	No—Leave of Absence
I2	Yes	12	0	Yes—Research Forum	Yes
I3	Yes	12	0	No	Yes
J1	Yes	13(+1/AP)	0	Yes—Summer Research	Yes
J2	Yes	13(+1/pending)	2	No	Yes

DEFENDANT'S EXHIBIT NO. 9

(Inteflex Promotion and Review Board Minutes—July 24, 1981)

(Excerpt)

INTEGRATED PREMEDICAL—MEDICAL PROGRAM
PHASE II PROMOTION AND REVIEW BOARD

July 24, 1981 1:00

Dean's Conference Room

AGENDA

• • •

CONFIDENTIAL

• • •

Please bring agenda to the meeting

INTEGRATED PREMEDICAL—MEDICAL PROGRAM
PHASE II PROMOTION AND REVIEW BOARD

Make-up of the Board

Robert E. Reed, M.D., Director—Presiding

A. Voting Members
- Ken Casey, M.D., Neuroscience II
- William Burkel, M.D., Anatomy
- Bruce Carlson, M.D., Dev. Anatomy
- Roy Glover, Ph.D., Neuroscience I
- William Murphy, M.D., Microbiology
- Arthur French, M.D., Human Illness
- Raymond Kahn, M.D., Microanatomy & Gen. Path.
- Henry Gershowitz, M.D., Genetics
- David Youel, M.D., Clin. Studies 400
- Bertram Schnitzer, M.D., Pathology–Human Illness
- Gail Barton, M.D., Clin. Studies 420
- William Pratt, M.D., Pharmacology
- Andrew Zweifler, M.D., Intro. Clerkship
- Carol Kaufman, M.D., Clin. Studies 410
- Sandra Cole, Clin. Studies 510

B. Guests and Others
- Sheryl J. Gierok, Inteflex, Admin. Asst.
- William Howatt, M.D., Inteflex Admissions
- Alan Smokler, M.D., Student Health Service
- Donald Brown, Ph.D., College of LS&A
- Alice Cohen, Inteflex Staff
- Helen Ferran, Inteflex Staff
- Jane Schultz, Ph.D., Curriculum Asst. Dean
- William Breckwoldt, Student
- Natalie Nazark, Student

INTEGRATED PREMEDICAL—MEDICAL PROGRAM
PHASE II PROMOTION AND REVIEW BOARD
July 24, 1981 1:00
Dean's Conference Room

Robert E. Reed, M.D., Director, Presiding

I. Promotion Board Proceedings

II. Approval of minutes of last meeting

III. Students eligible for promotion to the Clinical Phase (Phase III):

IV. Provisional Promotion to Phase III:

Ewing, Scott (pending successful completion of National Board (Part I)—Drop. from Reg.
• • • (pending successful completion of National Board, Part I) Retake Bds. Sept.

V. Students with deficiencies in one or more required courses:

Name	*Course*	*Deficiency*	*Action*
• • •	Neuroscience	E	Leave of absence 9/81; retake
• • •	Neuroscience	E	Irreg. Prog. 9/81; retake Sp 82
• • •	Neuroscience	D	Make up exam Sept. 81
• • •	Neuroscience	D	Make up exam Sept. 81
• • •	Neuroscience	D+	Make up exam 8/7/81
• • •	Phil. 344 (Ethics)	I	Will turn in paper
• • •			
• • •	Dev. Anat. 508	D	Make up exam 7/20/81—Pass

VI. Students requesting leave of absence:

• • • Granted commencing 9/81
• • • " • • • ended up applying for Irreg. Progm.—granted comm. 9/81
• • • "
• • • "
• • • "
• • • "

JA-124

VII. Students who successfully removed deficiencies:

Name	*Course*	*Completed*
• • •	Clin Studies 400	P
• • •	Clin Studies 400	P
Scott Ewing	Pharm. 627	P
• • •	Gross Anatomy 507	P

VIII. Enrollment Status (*pre*-Board status):

Class of 1983			*Class of 1984*		
Original Class		50	Original Class		50
Dropped/Resigned	—3		Dropped/Resigned	—2	
Leave of Absence	—3		Leave of Absence	—4	
Irregular Program	—9		Irregular Program	—7	
Regular Progress		35	Regular Progress		37
Addition to class	+13		Addition to Class	+13	
TOTAL		48	TOTAL		50

JA-125

PHASE II PROMOTION AND REVIEW BOARD

July 24, 1981 1:00

DEAN'S CONFERENCE ROOM

Robert E. Reed, M.D., Director, presiding.

Members present: Drs. French, Friedman, Gershowitz, Glover, Jones, Schnitzer, Youel and Zweifler.

Special Guests and Others: Mrs. Cohen, Dr. Brown, Mrs. Ferran, Ms. Gierok.

The Promotion Board convened at 1:15 p.m.

Dr. Reed reminded those in attendance of the confidentiality of the proceedings and the necessity of referring all questions directly to him or the administrative staff. The minutes of the May 8, 1981 meeting were approved as circulated.

Dr. Reed noted the students who are eligible for promotion to the clinical phase (Phase III) of the Program. He also reported that two students, Scott Ewing and • • •, were listed on the provisional promotion list because they did not obtain a qualifying score of 345 on the National Board Part I examination.

Dr. Reed commented that • • • performance in Human Illness was borderline during the first part of the year, but improved during the second half of the course. • • • passed Pharmacology but seems to have had somewhat of a crisis of confidence. The Board felt that with adequate preparation • • • would successfully pass the retake of National Boards Part I in September, and approved that course of action.

Dr. Friedman stated his concerns regarding the poor performance of Scott Ewing on the Boards and his repeated past borderline performance and deficiencies. Dr.

Reed reported that Mr. Ewing entered the Program in the Fall of 1975 during which he received a C in Chemistry, a C in Biology, a Pass in Freshman Seminar, and a C in a writing course. In the Winter term of 1976, he received a C in Chemistry 220, a B in Freshman Seminar, and withdrew from the Psychology 504 course. At that point he had not completed the work of the first year and was placed on a leave of absence. He took physics 125 and 126 in the Summer and Fall of 1976 at Point Loma College in California.

Mr. Ewing returned to the Program in the Winter of 1977 and received an A– in Chemistry 220 and an A in three other LS&A courses. In the Spring of 1977 he passed Introduction to Patient Care and during the 1977-78 year he passed all his courses and was promoted to Phase II.

In the Fall of 1978 he received an Incomplete which was converted to a Pass in Clinical Studies 400, a B in Microbiology 420 and an Incomplete in Gross Anatomy 507. The Gross Anatomy incomplete was converted to a C– by the make-up exam. During the Winter of 1979 he received C– in Genetics 505, a C in Microbiology 520, an E in Microanatomy and General Pathology 506, a B in Creative Writing and a Pass in Clinical Studies 410. Dr. Reed also noted that the Grade Appeal Committee met on May 22, 1979 to consider an appeal from Mr. Ewing that the Microscopic Anatomy and General Pathology be changed to a D. Mr. Ewing's appeal was denied. He removed his Microanatomy and General Pathology 506 deficiency by repeating the course during the Winter term of 1980 and receiving a C+. In the Spring term of 1980, he took Developmental Anatomy with a B– and received a C grade in Neuroscience I 509 after a re-examination to remove a deficiency. The Board in their July 30, 1980 letter noted concern and reminded him that any further deficiencies in the Program would be grounds for dismissal from registration. In the Fall of 1980, Mr. Ewing received a passing grade in Neuro-

science 609 and Pharmacology 626. In the Winter term of 1981 he received a passing grade for Clinical Studies 510 and a deficiency in Pharmacology 627. Dr. LaDu's comments noted that Mr. Ewing had a 65.7 average going into the final and received a 63.8 on the comprehensive final examination. He was given a make-up examination on May 27, 1981 on which he received a 67.7 score. This raised his overall average above 70% for the second semester if the second concurrent grade of 40% were not included. The Pharmacology Department expressed concern that he had several disappointing, spotty deficiencies in cardiovascular, autonomic, antibotic and endrocrine pharmacology that needed to be corrected if he were to pass the National Boards. Dr. Reed commented that his scores on the examinations in Human Illness fluctuated a great deal throughout the year with a borderline passing score on both the clinical and pathology portions. Overall he received the lowest score in the class. In June of 1981, Mr. Ewing took Part I of the National Board examination and received the lowest score in his class. His 235 score did not qualify him to continue on with the clinical phase of the Program for which a score of 345 is required.

Dr. Reed summarized that Mr. Ewing has now been in the Program for six years and taken three years to complete both Phases. The Board noted that Mr. Ewing had been warned that any further deficiencies would lead to his dismissal from the Program and it was agreed that failure in Part I of the National Board examination constitutes a deficiency. After further discussion, it was moved and seconded that Mr. Ewing be dropped from registration because of the absence of extenuating circumstances that would warrant reversing the previous statements that further deficiencies would lead to dismissal from the Program. The Board unanimously voted to drop Mr. Ewing from registration in the Program.

The Board then turned to students with deficiencies in one or more required courses. Dr. Reed reported that • • • received E in Neuroscience I 509. • • • is requesting a leave of absence from the Program for the Fall term 1981 and Winter term 1982 and plans to return in the Spring of 1982 to retake the Neuroscience course to remove this deficiency. • • • explained in • • • letter that a lack of time was instrumental in his poor performance during the Spring term of 1981. • • • is requesting a leave of absence to allow • • • time to concentrate on interests in other areas and also to regain • • • self-motivation in the sciences. Dr. Glover's comments indicated that • • • never really applied himself the way in which • • • was capable of doing. Personal commitments at the beginning of the term interfered with his academic work which resulted in poor performance throughout the course. Dr. Glover recommended that • • • not take a make-up examination, but repeat the course. The Board approved this plan of action and further approved • • • request for a leave of absence from the Program until the Spring of 1982.

The Board then turned its attention to the deficiency of • • • who received an E in Neuroscience I 509. • • • is requesting an irregular program at this time. He would like to take Pharmacology during the Fall term of 1981 plus LS&A courses; take the remainder of the Pharmacology sequence in the Winter term of 1982, as well as LS&A courses; and, then make up this Neuroscience deficiency by either taking the M-1 NBS course to satisfy the deficiency or retaking Neuroscience I 509 during the Spring term of 1982. Dr. Glover indicated that the material in Neuroscience I is taught in NBS 500 during the Winter term and in NBS 600 during the following Fall term. Therefore, • • • would have to retake Neuroscience I 509 in the Spring term of 1982 or obtain permission from the NBS Department and Neuroscience Department to do otherwise. During the coming year, • • • also plans on

taking language courses which would satisfy his LS&A requirement. The Board then approved • • • request for an irregular program commencing with the Fall term of 1981 and to retake Neuroscience I 509 in the Spring term of 1982.

The next deficiency discussed was that of • • • who received a D in Neuroscience I 509. Dr. Reed reported that • • • went through the Program her first year with no deficiencies and then in the Fall of 1978 received a D in Physics 240. She then went on a leave of absence during the Fall of 1979 and removed her Physics 240 deficiency in the Winter of 1980. During the Winter term of 1981 she received 2 C's and now in the Spring of 1981 she has a D in Neuroscience I 509. Dr. Glover stated that he was surprised she did so poorly on the final exam. He felt that her performance was weakened by taking the examination early. She was always in class and seemed to be up on the material. It was Dr. Glover's recommendation that • • • be given a make-up examination at the end of the summer. The Board approved this course of action.

• • • was then discussed for receiving a D in Neuroscience I 509. Dr. Reed reported that • • • went through the Program with no problems until the Winter of 1981 when he received an E in Philosophy 202. Mrs. Ferran commented that this is a course he discovered he did not enjoy until he was halfway into the term, but failed to drop the course in time to prevent an E grade. Then during the Spring of 1981 he received a D in Neuroscience I 509. Dr. Glover then indicated that • • • elected not to take the mid-term examination in this course, and therefore his entire grade was dependent upon his performance on the final examination on which he received a D grade. Dr. Glover noted that he was in and out of class sporadically and very quiet. It was Dr. Glover's recommendation that • • • be given a make-up examination when he returned from Europe at the end of the summer. The Board approved this recommendation and suggested the counselors talk to him to see if there are any possible motivational problems contributing to his poor performance.

• • • received a D+ in Neuroscience I 509. Dr. Reed reported that he came into the Program with SAT scores of 1220 which is considerably lower than other students in the class. During his first term in the Program he received a D in Chemistry 120. He withdrew from a language course but he was able to stay with his class by taking a summer course, Chemistry 225, in 1979. He had a satisfactory performance during his second year in the Program and then in the third year he received a D in Gross Anatomy 507 during the Winter term which he will remove by taking a make-up examination in the Summer of 1981. He then received a D+ in Neuroscience I 509 in the Spring of 1981. Dr. Glover stated that he got a 75% on the mid-term, but only 60% on the final which is too low to allow him to pass. He felt that he needs to demonstrate that he knows the material and studying again will help him. It was therefore Dr. Glover's recommendation that • • • be given a make-up examination and the Board approved this request. A date for this re-examination has been set for August 7, 1981.

Dr. Reed then noted that • • • had an incomplete in Philosophy 344 (Ethics), which was just a matter of turning in a paper. The Board voted and approved this plan of action.

The last deficiency discussed was that of • • • for receiving a D in Developmental Anatomy 508. Dr. Reed noted that • • • has had an up and down and borderline performance in the Program. He received a D in Microanatomy and General Pathology 506 and a D in Gross Anatomy 507 during the Winter term of 1981. He will be given a make-up examination to remove these deficiencies. He then received a D in Developmental Anatomy 508. It

was the recommendation of the instructor of the Developmental Anatomy course that he be given a make-up examination, which • • • took this week and received a score of 76% to give him an average of 72% for the course. The Board agreed with his plan of action, and expressed concern over his declining performance these past two terms.

The Board then turned its attention to students who are requesting a leave of absence. • • • is requesting a leave of absence during the 1981-82 academic year and planning on returning to the Program in the 1982-83 academic year. He plans to take an elective in the Internal Medicine Department of a hospital in Jerusalem and travel in Europe. Dr. Reed stated that • • • had successfully completed the first three years of the Program with no deficiencies. The Board approved • • • request for a leave of absence commencing with the 1981-82 academic year.

• • • would like to request a leave of absence for the 1981-82 academic year because he plans to travel, work part-time and possibly take an externship experience. Mrs. Cohen indicated that he needs the time off to do other things. The Board agreed with his request to take a leave of absence commencing with the Fall of 1981.

• • • is requesting a leave of absence for the 1981-82 academic year and plans to study in Israel or a university in the Western United States. Dr. Reed noted that • • • has a good record in the Program. The Board approved her request for a leave of absence for the 1981-82 academic year.

The last request for a leave of absence was that of • • • who would like to pursue studies in the Division of Biological Sciences here at The University of Michigan. The Board noted she has a good record so far in the Program and approved her request for a leave of absence for the 1981-82 academic year.

There being no further business, the meeting was adjourned at 2:45 p.m.

Respectfully submitted,

/s/ Sheryl J. Gierok
Sheryl J. Gierok
Administrative Assistant
Inteflex

SJG:cw

DEFENDANT'S EXHIBIT NO. 10

(Inteflex Promotion and Review Board Minutes—July 31, 1981)

(Excerpt)

INTEGRATED PREMEDICAL—MEDICAL PROGRAM
PHASE II PROMOTION AND REVIEW BOARD

July 31, 1981 1:00

ADMISSIONS CONFERENCE ROOM

AGENDA

• • •

CONFIDENTIAL

• • •

Please bring agenda to the meeting

INTEGRATED PREMEDICAL—MEDICAL PROGRAM
PHASE II PROMOTION AND REVIEW BOARD

Make-up of the Board

Robert E. Reed, M.D., Director—Presiding

A. Voting Members
Ken Casey, M.D., Neuroscience II
William Burkel, M.D., Anatomy
Bruce Carlson, M.D., Dev. Anatomy
Roy Glover, Ph.D., Neuroscience I
William Murphy, M.D., Microbiology
Arthur French, M.D., Human Illness
Raymond Kahn, M.D., Microanatomy & Gen. Path.
Henry Gershowitz, M.D., Genetics
David Youel, M.D., Clin. Studies 400
Bertram Schnitzer, M.D., Pathology-Human Illness
Gail Barton, M.D., Clin. Studies 420
William Pratt, M.D., Pharmacology
Andrew Zweifler, M.D., Intro. Clerkship
Carol Kaufman, M.D., Clin. Studies 410
Sandra Cole, Clin. Studies 510

B. Guests and Others
Sheryl J. Gierok, Inteflex, Admin. Asst.
William Howatt, M.D., Inteflex Admissions
Alan Smokler, M.D., Student Health Service
Donald Brown, Ph.D., College of LS&A
Alice Cohen, Inteflex Staff
Helen Ferran, Inteflex Staff
Jane Schultz, Ph.D., Curriculum Asst. Dean
William Breckwoldt, Student
Natalie Nazark, Student

INTEGRATED PREMEDICAL—MEDICAL PROGRAM
PHASE II PROMOTION AND REVIEW BOARD

July 31, 1981 1:00
ADMISSIONS CONFERENCE ROOM

AGENDA

Robert E. Reed, M.D., Director, Presiding

I. Promotion Board Procedures

II. Approval of minutes of last meeting

III. Student requesting a leave of absence
• • • s/ granted eff. Fall '81 /s

IV. Student appeal
Scott Ewing

PHASE II PROMOTION BOARD

1:00 p.m. July 31, 1981

ADMISSIONS CONFERENCE ROOM

Robert E. Reed, M.D., Director, presiding.

Members present: Drs. Burkel, Friedman, French, Gershowitz, Glover, Murphy, Pratt, Schnitzer.

Special Guests and Others: Dr. Smokler, Mrs. Cohen, Mrs. Ferran, Ms. Gierok.

A special meeting of the Inteflex Phase II Promotion and Review Board was called to order at 1:00 on July 31, 1981 by Robert E. Reed, M.D., Program Director and Chairman of the Committee. Dr. Glover noted that the reference to the standard NBS course extending into the Winter term should be corrected to state that the material covered in the Neuroscience I course is covered in NBS 500 in the Winter Term plus NBS 600 the following Fall Term. Therefore, tak`ng that course as a replacement for the Neuroscience I course would require attendance over two academic years. With this correction, the minutes were approved as circulated.

The Board then turned to the request of • • • for a leave of absence. Dr. Reed noted that • • • had overlooked the fact that she should apply to the July meeting of the Board and asked that her request be considered after that deadline. She plans to use the leave to pursue studies in interior design at Eastern Michigan University. After discussing the potential risk of having a difficult to manage bulge of enrollments in the I-3 class during the 1982-83 year, the Board approved her request for a leave of absence.

The Board then turned to the appeal of Scott Ewing. Dr. Reed noted that the Board at its previous meeting had

voted to drop Mr. Ewing from registration in the Program. Inteflex procedures state that students in this situation have the right to appear before the Board to present evidence of which the Board may not have been aware and to make their case personally. Dr. Reed noted that subsequent appeals must go to the Executive Committee of the Medical School as the Promotion and Review Boards are Medical School committees. Dr. Reed then reviewed Scott's record again for the Board. He noted that Scott entered the Program in the Fall of 1975 and that at the end of his second year in the Program, because of withdrawals and incompletes, he had been placed administratively on an irregular program and was not allowed to go on into the Introduction to Patient Care course. The May 1976 Board confirmed that irregular program but stated that they wished to review his case in July to determine what progress had been made on removing the incompletes. By the July meeting, Mr. Ewing had completed the incomplete work and was then placed on a leave of absence. During the summer and fall of 1976 he took two physics courses in California, receiving A's.

He was readmitted to the Program in the Winter of 1977, passed the Introduction to Patient Care course in the Spring of 1977 and during the 1977-78 school year completed the remainder of his Phase I coursework without difficulty. In July of 1978 he was promoted to Phase II of the Program. At the end of the Fall term in 1978, illness prevented him from completing the Gross Anatomy and Clinical Studies coursework. He made up those incompletes during the Winter term of 1979 but during that term received an E grade in Microscopic Anatomy and General Pathology. After an unsuccessful appeal of that grade, Mr. Ewing, on July 25, 1979, was placed on an irregular program and was warned that "... any further deficiencies will lead to your being dropped from registration in the Inteflex Program ..." He was not enrolled at The University of Michigan during the Fall term of 1979.

The Winter term of 1980 he repeated the Microscopic Anatomy and General Pathology course with a C+ grade and passed his courses in the Spring term of 1980 although a make-up examination was required in the Neuroscience I 509 course. The July 25, 1980 Phase II Promotion and Review Board sent him a letter noting his Neuroscience deficiency and stating "... that any further deficiencies in the Program would be grounds for your dismissal from registration ..." This past year he successfully completed the work of the Fall term but had several poor scores on examinations during the Winter term in Pharmacology and in the Human Illness course. At the end of the Winter term he passed the Human Illness course but with the lowest overall score in the class. He had received a 67% score on the Pharmacology final and received a passing grade because the Department agreed to not count the second concurrent examination in the Winter term on which he received a 40% grade. Dropping this test raised his overall grade to above 70%. Scott then received a 235 score on Part I of the National Board, scoring below 300 on all subsets on the examination except for Pathology where he received a 400 and Behavorial Sciences where he received a 420.

At the last Promotion Board meeting, the Board unanimously voted to drop him from registration from the Program on the grounds that he had received a deficiency in the National Board examination after having been warned on two occasions that the further deficiencies would be grounds for dismissing him from the Program. Since that meeting, Scott has completed the Introductory Clerkship at the Chelsea Family Practice Clinic, receiving an honors grade and the instructor's comments were noted by the Board. The Board then reviewed the letter from Mr. Ewing stating the background for his appeal.

Mr. Ewing then joined the meeting and reviewed with the Board the events of the previous year. He noted that

his mother's heart attack in the Spring of 1980 had been a disrupting influence during the summer and early fall but that in spite of that he had performed satisfactorily throughout the Fall term in what he described as the most difficult term in the curriculum. However, early in the Winter term a 5½ year close relationship with his girl friend ended. Scott described this as having a greater negative effect on him then it should have primarily due to the length and closeness of the relationship and the fact that he had changed classes twice and therefore did not have the close relationship with classmates that other Inteflex students had who stayed with their classes.

He also noted that he had spent a great deal of time preparing a paper for the Hopwood Essay contest. He circulated this 100-page paper among the Board members for review. Mr. Ewing stated that in retrospect he should not have devoted this much time to his writing but that he felt a commitment to his instructor who had encouraged his work. Scott said that the work on the paper and his personal crisis had caused him to get behind in his work in Human Illness and Pharmacology and that he was only beginning to recover by the end of the year. He cited his passing scores on the last examinations in Human Illness and Pharmacology as evidence that his performance was improving. He stated that the requirement for a make-up examination in Pharmacology was a great shock to him and that he was under a great deal of pressure because of the previous Board stipulations regarding further deficiencies. After successfully completing the Pharmacology make-up examination he only had ten days to prepare for the Boards. His background, the fact that he was further away from the basic medical science courses than other Inteflex students and the pressure to achieve made it very difficult for him to achieve a passing score. While taking the exam he realized that while the terminology was familiar to him, he was not prepared to pass it and a certain

amount of "panic" set in which he believes made his score even lower than it would have been without this pressure.

Mr. Ewing reminded the Board of the time and effort he had already invested in the Program and his deep desire for a career in medicine. He cited the excellent clinical work that he has done circulating a patient work-up he had prepared in the Clinical Studies 400 course which had been described as excellent by Dr. Faith Fitzgerald and a recent paper prepared during his clerkship. These plus his honors grade in the Introductory Clerkship, Mr. Ewing said, was evidence of the level of clinical work of which he was capable. He asked for a second chance at the National Board test with adequate time to prepare.

Several of the Board members then asked Mr. Ewing questions. Dr. Murphy noted that a number of students in the Program have had very severe personal crises in their personal lives which had not affected their work to the degree that had Scott's and wondered why this had had such an impact on him. Mr. Ewing replied that the long-term nature of the relationship and the fact that he had changed classes twice in the Program made his situation somewhat unique. Dr. Gershowitz noted that there were numerous instances in Mr. Ewing's record of having incompletes and make-up examinations to achieve a passing grade. He expressed concern that this pattern seemed to be continuing up to the present. Mr. Ewing agreed that this had been a pattern and he explained that it might be due to a lack of maturity, but stressed the fact that he had learned a great deal during this past year about himself and felt that the previous tendency to put things off and not be well prepared was now past him.

Dr. Friedman asked if Mr. Ewing had been aware of the meaning of the letters that he had received which advised him that further deficiencies would lead to his being dropped from the Program or would be grounds for dismissal from the Program. Mr. Ewing said he was well

aware of what those meant and in fact this had led to his being "under the gun" during his last two years in the Program. He reiterated that this may have been one factor in his low performance on the National Board examination because he realized the critical importance of passing.

There being no further questions, Mr. Ewing summarized his situation by reviewing the particular reasons for his poor performance during the past term, the evidence from his work of his ability to perform at the clinical level and his strong desire to continue toward a career in medicine. Mr. Ewing left the meeting.

The Board discussed the presentation and the situation. Dr. Reed noted that the question before the Board was "Are there circumstances that would make the Board reverse the stand taken in letters to Mr. Ewing regarding further deficiencies and the vote of the Board at the previous meeting to drop him from registration"? Board members expressed concern about his overall record and the pattern of his academic performance. His outstanding writing ability was noted by several Board members as a factor in his patient write-ups which have been graded highly by clinical instructors. It was also noted that the crisis during the early part of the Winter term seemed to have had a major effect on his ability to perform in his academic work but that he had not sought any help in resolving these issues. It was moved and seconded that the previous action to drop Mr. Ewing from registration in the Program be reaffirmed. The motion carried unanimously. The Board adjourned at 2:45 p.m.

Respectfully submitted,

/s/ Robert E. Reed
Robert E. Reed, M.D.
Associate Dean
Director, Integrated
Premedical–Medical Program

RER:cw

DEFENDANT'S EXHIBIT NO. 17

THE UNIVERSITY OF MICHIGAN
Integrated Premedical–Medical Program
Ann Arbor, Michigan 48109

August 1, 1979

Scott Ewing
30 Catspaw Cape
Coronado, CA 92118

Dear Scott:

The Phase II Promotion and Review Board, at its July 25, 1979 meeting, approved your request for an irregular program but did not approve the schedule outlined in your letter. The Board expressed concern over your record in the program, noting that you have not completed a full academic load during most of your terms. The Board voted, in view of this performance and the fact that this will be your second irregular program, to allow you to follow a reduced schedule for the 1979-80 academic year, repeating the Microanatomy and General Pathology 506 course in the Winter Term of 1980, and taking the Neuroscience I 509, Developmental Anatomy 508, and Philosophy 644, the Ethics course (formally in the Year VI schedule) in the Spring Term of 1980. In the 1980-81 academic year you must take the full I-4 curriculum, including an elective in both Fall and Winter Terms. The exact schedule for that year will be:

FALL 1980

Human Illness 630	7
Neurosci II 609	3
Pharm 626	3
Elective	3
	16

WINTER 1981

Human Illness 640	9
Pharm 627	2
Clin Studies 510	1
Electives	3-5
	15-17

SPRING 1981

Human Illness 650	3
Intro clkship	3
(July)	—
	6

The Board further stipulated that independent research, while commendable, may not be substituted for the elective requirements.

The Board also asked that you be reminded that you need seven more hours of electives to meet the basic requirements for promotion to Phase III. You should have no trouble meeting these requirements over the next two years. You should also be aware that the Inteflex curriculum must be completed in a maximum of eight academic years. The Board also specified that any further academic deficiencies will lead to your being dropped from registration in the Inteflex Program.

If there is anything that I or the Inteflex Staff can do to assist you in following the outlined program of study, please do not hesitate to call on us.

Sincerely,

/s/ Robert E. Reed
Robert E. Reed, M.D.
Associate Dean
Director, Integrated
Premedical–Medical Program

DEFENDANT'S EXHIBIT NO. 18

THE UNIVERSITY OF MICHIGAN
Integrated Premedical–Medical Program
Ann Arbor, Michigan 48109

September 12, 1979

Scott Ewing
1010 Catherine #602
Ann Arbor, Michigan 48104

Dear Scott:

As we have already discussed, the Inteflex Phase II Promotion Board at its meeting on August 23, 1979, voted to deny your appeal of the requirement that you take the fourth year curriculum of the program as a unit rather than spreading it over two years as you requested. The Board again expressed concern about your over-all record and because of this felt that you should carry a full program load during the 1980-81 academic year. While recognizing that your proposed program would have allowed time to pursue a two-year research endeavor, the Board noted the absence of any concrete plans for such a long research project. The previously stipulated schedule gives you a full calendar year to carry out your research interests and the Board believed this is an adequate amount of time for such work.

The letter you received after the July meeting of the Board was therefore reaffirmed as the Board's decision regarding your irregular program schedule and future requirements. I will not repeat those stipulations here. As before, if there is anything that I or members of the Inteflex administrative staff can do to assist you in planning your schedule, please do not hesitate to ask.

Sincerely,

/s/ Robert E. Reed
Robert E. Reed, M.D.
Director, Inteflex

DEFENDANT'S EXHIBIT NO. 19

THE UNIVERSITY OF MICHIGAN
INTEGRATED PREMEDICAL–MEDICAL PROGRAM
Ann Arbor, Michigan 48109

July 30, 1980

Mr. Scott Ewing
1010 Catherine
#203
Ann Arbor, MI 48104

Dear Scott:

The Inteflex Phase II Promotion and Review Board at its July 25, 1980 meeting was sorry to learn that you must take a re-examination in Neuroscience 509. The Board was concerned that this may be an indication that the problems that previously led to your irregular schedule and difficulty in completing course work might be returning. The Board wished me to note these concerns to you and to remind you that any further deficiencies in the program would be grounds for your dismissal from registration.

If there is anything that I or the Inteflex staff can do to assist you in meeting this makeup examination or in your fall scheduling, please do not hesitate to ask.

Sincerely,

/s/ ROBERT E. REED
Robert E. Reed, M.D.
Associate Dean
Director, Integrated
Premedical–Medical Program

DEFENDANT'S EXHIBIT NO. 49

(Excerpts from Medical School Executive Committee meeting minutes, August 27, 1981.)

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Dean Gronvall asked Dr. Reed to provide background information on the appeal by Scott Ewing. Dr. Reed noted the material distributed to the Executive Committee under separate cover and the addendums to the appeal requested by Mr. Ewing. Dr. Reed proceeded to provide a brief summary of Mr. Ewing's background and the issues related to his appeal. Mr. Ewing was admitted to the Inteflex Program in the fall of 1975 and completed the first two years of the program in three calendar years, being on leave for one year. During the second two-year phase of the program, Mr. Ewing was required to go on an irregular program because of an academic deficiency in the Microscopic Anatomy/General Pathology course. At that time he was advised that any further deficiencies would be grounds for dismissal from the program. Dr. Reed conceded that it is unusual to give such a warning after one failure but that, in this case, the decision was based on his total record. Mr. Ewing completed the coursework of the second two-year phase, however, he failed to achieve a passing score on Part I of the National Board of Medical Examiners (NBME) test taken in June of 1981. At its July meeting the promotion review board voted to dismiss Mr. Ewing from the program in view of his previous warning and failing score.

Mr. Ewing, accompanied by Drs. Robert Anderson and Robert Shott, arrived at the meeting. Dr. Anderson provided some comments on Mr. Ewing's situation, particularly as it related to his intellectual capabilities, his history of psychological problems, the need for counseling, and the external elements which have impacted on Mr. Ewing's

performance. Dr. Anderson highlighted Mr. Ewing's excellent performance in the second year of Medical School, his excellent ratings on the Introductory Clerkship, awards received, his interest in the clinical side of medicine, the six years of investment, and stressed that Mr. Ewing is not requesting readmission to the University of Michigan but is requesting the opportunity to re-take the National Board of Medical Examiners test. Mr. Ewing believes that he can succeed on the NBME but recognizes that his efforts will have to be coupled with intensive counseling. Dr. Anderson concluded his remarks by pointing out that the Medical School should attempt to rehabilitate Mr. Ewing rather than punish him and that Mr. Ewing has the capability of becoming a superior clinician.

Dr. Shott expressed the belief that the capacity and interest to succeed in medicine resides with Mr. Ewing and that Mr. Ewing's problems can be overcome based on his own difficult experience in the pre-clinical years. Dr. Shott added that at the critical junction in Mr. Ewing's career it would be unjust and unwise to deny him the opportunity to develop clinically, particularly based on his clinical performance to date.

Mr. Ewing highlighted a number of points made in his written presentation including the fact that he is not requesting that the Executive Committee overturn the promotion and review board's decision, but that he be granted leave of absence status so that he can take the NBME test a second time. He added that the leave of absence would also allow him an opportunity to acquire additional psychological counseling. Mr. Ewing stressed that the consequences for him were significant whereas they were limited for the Medical School. Mr. Ewing conceded that he has always been more interested and motivated in the clinical activities vis-a-vis the basic sciences, although he recognizes that they represent a required hurdle. Mr. Ewing pointed out that Drs. Anderson and Shott represented two

respected clinicians who know him personally and that the Executive Committee should give appropriate weight to their comments in reaching a decision.

Mr. Ewing indicated that upon receipt of his scores on the NBME test, he approached Dr. Reed about the possibility of re-taking the test. Mr. Ewing stated that Dr. Reed at that time foresaw no difficulties in re-taking the test; Mr. Ewing said this precluded him from taking an immediate leave of absence and thus avoid dismissal. Dean Gronvall noted that leaves are not used to block promotion board actions during such a period. Mr. Ewing responded that this conclusion was based on discussions with Dr. Gibson. Dr. Reed stated that Mr. Ewing's account of his comments was accurate but that had Mr. Ewing asked for a leave at that point, it would have been denied.

Dr. Abrams asked Mr. Ewing whether or not there have been any procedural problems through the various hearings and appeals. Mr. Ewing responded that for the most part there had been no problem with the exception that he was denied the opportunity to speak on his own behalf in his appeal of the failure in the Microanatomy and General Pathology course.

Dr. Winans asked what Mr. Ewing felt was necessary to pass the NBME test given his apparent problems with the basic sciences. Mr. Ewing expressed the belief that his problems have arisen as a result of life circumstances and his inability to cope with them rather than his ability to master the basic sciences. He added that the psychological counseling represents the cornerstone to being successful on the NBME test. Dean Gronvall asked why another year of counseling is required prior to taking the test. Mr. Ewing responded that the test is only offered twice a year and that he is not eligible for the September test, but added that he could perhaps take a shelf examination at an earlier time.

Dean Gronvall asked Mr. Ewing what his understanding was of the level of importance of his performance on the NBME test prior to the test. Mr. Ewing responded that the issue is addressed in the addendum to the appeal and that he considered all examinations to be important but that he was unsure of what constituted a deficiency. Mr. Ewing added that he was aware that he was subject to dismissal if he failed the Microanatomy course for a second time, but that he did not know a failure in the NBME was grounds for dismissal, although it had crossed his mind. Mr. Ewing conceded that it was perhaps poor judgement to take the National Board exams at that time and that it reflected an eagerness to get into the clinical aspects of medicine.

Dean Gronvall asked Mr. Ewing to comment on the dismal performance on the NBME test. Mr. Ewing responded that the pressure of the exam resulted in the surprisingly low scores and that he is aware that a thorough review of the basic sciences is required. Mr. Ewing added that at the same time, however, this does not mean that he has learned nothing in the basic sciences as demonstrated by his performance in the clinical activities. Dean Gronvall stated that the Medical School tends to view the NBME as setting a minimum level of performance and asked Mr. Ewing whether he thought the public would accept the fact that, in his case, it requires one year further preparation in order to demonstrate a minimal level of performance. Mr. Ewing responded that 10-15% fail the NBME test the first time they take it, and added that he was at a disadvantage due to the fact that he was forced to take a full load of courses in the past year. Other students taking a lightened load had more time for preparation. He added that in the past when he has been given an opportunity to correct a deficiency that he had been successful. Dr. Abrams asked why he became so involved in other activities when he was having problems in the basic science coursework. Mr. Ewing

explained that the promotions and review board indicated that he must take a full load and that he had, therefore, scheduled the independent writing course and in that course made a commitment to the instructor to enter the writing contest. Mr. Ewing added that he did not anticipate the problems with his girlfriend.

Dr. Anderson agreed that Mr. Ewing's record is checkered and that all the deficiencies cannot be justified but noted that there have been significant events in his life that have affected his ability to perform at those times when his record is particularly poor. Dr. Anderson added that it was a mistake to take the NBME test at that time and that this may reflect the lack of counseling available to the medical students.

Dean Gronvall pointed out that part of the responsibility of the Medical School is to the public to ensure that an individual has demonstrated the ability to perform intensively over a period of time. Mr. Ewing responded that by accepting his appeal it does not necessarily mean a vote of confidence but rather merely provides an opportunity to prove to himself whether or not he can continue his medical career. Mr. Ewing concluded his remarks by adding that he recognizes that the pressures in the clinical setting are significant, but that he had demonstrated the ability to handle these and that the clinical instructors have been unanimous in their endorsement. Mr. Ewing and Drs. Anderson and Shott left the meeting at this point.

The Executive Committee then discussed the comments by Mr. Ewing and Drs. Anderson and Shott in some detail. Concern was expressed with Mr. Ewing's record over time which indicated Mr. Ewing's inability to handle stressful situations and set realistic priorities.

Dean Gronvall asked Dr. Reed if there were any other pieces of information that the promotion board considered germane. Dr. Reed responded that the board's prime con-

cern was the evidence of continued problems in spite of seven years of time post-high school and previous counseling and therapy. Because of this record the board had placed him on warning and did not find the circumstances adequate reason to reverse that decision. Dr. Reed added that Mr. Ewing's failure to seek help related to the problems with his girlfriend and academic performance in the past year, despite the fact he had experienced help from therapy in the past was troublesome.

The Executive Committee unanimously approved a motion to deny Mr. Ewing's appeal for a request for a leave of absence status.

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DEFENDANT'S EXHIBIT NO. 50

(Excerpt from EXECUTIVE COMMITTEE MEETING Minutes of June 17, 1982)

The appeal for readmission of Mr. Scott Ewing was introduced by Dean Gronvall stating that Mr. Ewing was aware of the absences of several committee members but that he had elected to appear before the Committee in spite of this. An additional piece of material (a May 12, 1982 letter from Dr. Reed to Dean Gronvall) was distributed to the Executive Committee upon request of Mr. Ewing.

Dr. Taren reviewed the chronology of events in Mr. Ewing's dismissal. Dr. Reed reviewed the allegation of Mr. Ewing's lawyers regarding unfair treatment in that he was not allowed a second opportunity to take National Boards. Dr. Reed noted that students are given second opportunities to re-take National Boards or courses if it is the first failure in the exam or course. This does not happen if they have been issued a warning about further deficiencies. Students have been dropped from registration after a first course failure when they were in a warning or probationary status.

When asked by Dr. LoBuglio regarding his opinion as to why Mr. Ewing has had so much difficulty, Dr. Reed stated that he wished to remain neutral in the discussion. He indicated he would clarify statements or chronology of events but believed he should not influence the deliberations beyond the statements made in the letters he had written. (Dr. Herrmann left the meeting). Mr. Ewing joined the meeting.

Dean Gronvall reiterated Mr. Ewing's decision to appear at the Executive Committee knowing that there were absences. Mr. Ewing acknowledged that he knew this fact but had elected to come. Mr. Ewing began by distributing

a copy of letters from the faculty (Drs. T. Davies, 1-6-82; R. Anderson, 12-15-81; S. Baker, 12-15-81; F. Bergman, 2-18-82) in support of his qualifications. (Dr. Gibson joined the meeting).

Mr. Ewing asked that the following comments from his reappeal packet be entered into the minutes:

> "Scott was quickly identified as a particularly conscientious and hard-working student who went well beyond the required norm in background reading and documentation pertaining to the patients assigned to him. . . . I had no hesitation in endorsing an honor grade for him. . . . It is very evident to me that this young man is capable of outstanding work.
>
> Terrence C. Davies, M.D.
> Professor and Chairman
> Dept. of Family Practice

"Scott stood out in the group. . . . He seemed to immerse himself in the excitement of clinical work and performed in outstanding fashion. I agree with Dr. Davies' decision to grant him honors on the rotation.

Michael Liepman, M.D.
Assistant Professor of
Family Practice and
Psychiatry

"I have been a clinical instructor at the University of Michigan Medical School for the past fifteen years and have had the opportunity to closely observe students as they come and go. . . . I believe Scott will be an asset to a medical school of the highest caliber. . . . Scott is destined to be a superior clinician.

Robert E. Anderson, M.D.
Clinical Instructor
Dept. of Internal Medicine"

He asked that the decision by the Executive Committee be based on "new information". Mr. Ewing stated that he is reapplying to be allowed to take National Boards and that if he passes, he would then be reinstated as a student in good standing. He would then take the 1982-83 year off to apply for transfer to other medical schools. Mr. Ewing stated that he would make every possible effort to transfer but that if he did not gain admission to another University, he would return to Michigan to complete his medical training. Dean Gronvall requested clarification; that Mr. Ewing was not applying for a "limited admission" but rather to be considered a student in good standing with the option of returning to Michigan. Mr. Ewing responded affirmatively.

The issue of the number of years it took Mr. Ewing to complete the first two years of the Inteflex Program underwent extensive discussion. Mr. Ewing denied that he took reduced loads explaining that he did not take Inteflex courses in the winter of 1977 because the Promotion Board had prevented him from doing so. Dr. Reed pointed out that Mr. Ewing completed the first two years in three calendar years being on leave away from Michigan for part of that time during which he took two required physics courses and taking non-Inteflex LS&A courses during the 1977 winter term, which counted towards the required bachelor's degree. Mr. Ewing stated that with advanced placement courses he did not actually need the 1977 winter term courses to meet his degree requirements. Dr. Reed summarized that he saw the problem as a matter of semantics not facts, with the difference being how one viewed the difference between LS&A and Inteflex courses. Dean Gronvall stated that in his view the LS&A and Medical School requirements cannot be separated in an integrated program such as Inteflex.

Discussion ensued regarding deficiencies in Neuroscience and Pharmacology. Mr. Ewing stated that in both cases, Drs. Ross and LaDu had suggested retaking the exam for his (Ewing's) best interest. In response to questions from the Committee regarding why Mr. Ewing displayed such uneven performance, Mr. Ewing stated that he lacked maturity, and was not able to recognize the significance of the basic sciences and their application to the clinical sciences. He further stated that he had been extremely disillusioned with the Inteflex Program in the emphasis it placed on science rather than the humanities and on the attitudes and behavior of his classmates.

In answer to questions regarding his poor performance on the National Boards Part I, he cited extreme pressure and anxiety related to taking the Pharmacology make-up exam just a few weeks before the National Board test and the fact that he had to pass that exam before the Promotion Board would declare him eligible to take the National Boards. In answer to questions regarding his exact scores, Dr. Taren read from Mr. Ewing's record that he had achieved passing marks in only two out of five areas (Pharmacology and Behavioral Science). His total score was 235 with the breakdown of scores as follows: Anatomy, 220; Physiology, 230; Biochemistry, 265; Pathology, 295; Microbiology, 175; Pharmacology, 400; and Behavioral Science, 420.

In discussing the reasons behind the Board's issuance of the warning regarding further deficiencies, Mr. Ewing stated that he feels the Promotion Boards dealt with him more harshly than other students and speculated that perhaps they expected greater achievement based on his credentials. He said that he has not consistently failed and there is nothing wrong with him psychologically other than being immature. He acknowledged that he did not act appropriately in response to his academic problems and that in retrospect an accelerated program was probably

not the best for him. Mr. Ewing stated that he pursued his own interests rather than academic areas chosen by the School as being important. Mr. Ewing stated that he had become disillusioned about his experiences here but offered no explanation (in response to a question) as to why he had not transferred.

In answer to a question posed regarding opportunities to appear before Promotion Boards, Mr. Ewing responded that he could not say how many times he had but that he was denied an opportunity to speak to the Board when he had the failure in Microanatomy and subsequently when he appealed that grade. (Dr. Reed later reported to the Executive Committee that the Inteflex Promotion Boards do not invite students to join the meetings unless they are at risk of being dropped from registration.)

In response to Dr. Agranoff's question about the compatibility of Mr. Ewing's creative talents in combination with the technical aspects of being a physician, Mr. Ewing responded that he felt the two were "very compatible". He added that he wished to utilize his writing skill as a physician and cited two examples of physicians who had done so. He further stated that writing is his avocation reiterating his primary goal to become a physician.

Some discussion ensued regarding Mr. Ewing's counseling experiences. He reported that during his first year he had five visits with Dr. Smokler followed by more intense counseling in San Diego with a clinical psychologist while on leave of absence. He stated his awareness of his inability to adapt to his environment during his time as an Inteflex student. Dr. LoBuglio pointed to some inconsistency in Mr. Ewing's statements regarding his "panic reaction" prior to the National Boards which Mr. Ewing said influenced his poor performance and his apparent appropriate and conscientious behavior on his clinical rotation with Dr. Liepman just two or three weeks later.

Mr. Ewing responded by saying that the circumstances leading to his poor performance on Boards had been cumulative, that moving to a different apartment had helped create a new and "refreshing" atmosphere and approach and that he found the clinical experience very stimulating and rewarding.

As there were no further questions, Dean Gronvall asked Mr. Ewing to make any final comments he wished. Mr. Ewing asked that everyone recognize the impact of their decision on his future and added that, although he could request a third opportunity to pass the Boards, he would not do so if given a second opportunity to pass and he failed.

Mr. Ewing asked when a decision would be reached, and Dean Gronvall reported that the Committee would be deliberating on the case but could not give a specific date. Mr. Ewing left the meeting.

Dr. Reed clarified Promotion Board procedures regarding student attendance at meetings. Further discussion ensued regarding perceived changes in Mr. Ewing's maturity level as well as the potential incompatibility between his approach to his academic work and the disciplined work required of physicians. Dean Gronvall commented that the question is that Mr. Ewing had not met the requirements for promotion and retention as prescribed by the faculty of the Medical School. He stated that while Mr. Ewing is asking the Committee to judge his potential, in fact, schools make judgments based on performance. Further discussion ensued regarding the unevenness of his performance as well as the feeling that Mr. Ewing has perceived his deficiencies to be minor in nature while the School has viewed his deficiencies to be of enough magnitude to issue warnings and finally to drop him from registration.

In concluding this item, Dean Gronvall asked if any additional material should be obtained from the Executive Committee to reach a conclusion. It was agreed that the records provided complete information to make a decision.

Dean Gronvall stated that he would give the Executive Committee time to review the information and vote on the matter at a future meeting.

Dean Gronvall adjourned the meeting at 3:00 p.m.

DEFENDANT'S EXHIBIT NO. 51

(Excerpt from EXECUTIVE COMMITTEE MEETING Minutes of July 29, 1982)

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The Committee initially addressed item 3, "Scott Ewing Reappeal". Dean Gronvall provided an overview, noting his recent letters which had been circulated. Mr. Ewing was then welcomed to the meeting.

Mr. Ewing began his comments, noting that he had wanted to be able to respond to the June 7, 1982, meeting summary in written form, but was not given the summary until two days before this session. Mr. Ewing stated that he did not believe the minutes of the June 17, 1982 meeting accurately reflected his comments. He also made several comments regarding that meeting noting that he was not made aware of member absences until 10:30 a.m. on that day and specifically that he was unaware that Dr. Dalston was going to be absent. He also was unaware that no vote was going to be taken that day.

Mr. Ewing asked Dr. Taren to confirm that he (Dr. Taren) had called him to voice concern over the expected absences. Dr. Taren confirmed that he had called Mr. Ewing to inform him of expected absences and that Mr. Ewing had reaffirmed his wish to appear before the Committee despite the absent members.

Mr. Ewing went on to read quotes by Dr. Reed from a Promotion Board meeting indicating that a failure in a course was not sufficient grounds for dismissal. Dr. Reed agreed that students are not dismissed after the first failure of a course unless the student had previously been warned that further deficiencies would lead to dismissal. A number of students in that position have been dropped without the opportunity of repeating the course. In response to a question from Mr. Ewing, Dr. Reed said that there was no time limit on such warnings.

Mr. Ewing proceeded to describe what he considered to be correct depictions of his comments that were not reflected in the June 17 meeting summary. On page 8450 (paragraph 3) he noted that the phrase, "he lacked maturity" was incorrect and that he had indicated that extensive extracurricular pursuits were the basis for poor, uneven performance. Mr. Ewing commented that he accepts the responsibility for overextending himself, although he regards the added activities as components in his overall medical training. He ended these comments conceding that immaturity may have had a role in his performance.

On page 8452 (paragraph 3) Mr. Ewing paraphrased a quote from Dean Gronvall that students are not judged on potential but on performance. Mr. Ewing agreed with the meaning of that statement and read several letters (excerpts) from faculty (Davies, Vander, Liepman) which praised his ability to perform in the clinical setting. Others made similar favorable comments, and Mr. Ewing stressed that this record was the basis for his request—not his potential. Mr. Ewing said that, given the comments about his clinical performance (not potential) he believed that he deserved another opportunity to prove himself by taking a second National Board examination. He noted that there was no fair way to adjudicate the situation other than to take a second exam. Mr. Ewing added that other students had failed more classses than he or had been given three chances (in some cases) to pass the Board exam.

Mr. Ewing continued, highlighting what his options would be if allowed to take a second examination:

1. *If he fails,* he indicated that the earlier decision of the Executive Committee to refuse his request for readmission would be vindicated.

2. *If he passes,* he will make every effort to transfer to other medical schools.

3. *If he passes,* and cannot get into another school, he will re-register here at the University of Michigan.

Dean Gronvall asked if there were any questions. The Committee did not have any questions, but Dr. Reed did have a comment for clarification. Dr. Reed pointed out that he disagreed with Mr. Ewing regarding the reason Mr. Ewing did not take the Introduction to Patient Care course in the spring of 1976. On the second page of the July 29 letter to the Committee, Mr. Ewing said that Dr. Reed's statement regarding the reason for Mr. Ewing not taking the Introduction to Patient Care course was not true. Mr. Ewing's comments indicated that the reason he did not take the course was that he had not matched with a preceptor. Dr. Reed quoted from the Promotion Board meetings of May 7 of that year where he stated that Mr. Ewing had been placed on an irregular program because he had not completed the work of the winter semester. The Promotion Board had confirmed this irregular program and stipulated that Mr. Ewing must make up the incomplete work during the month of May.

Mr. Ewing repeated his statement that the reason he did not take the course was the absence of a preceptor for him. Dr. Reed indicated that while the event was several years in the past, and he did not consider it to be a major issue in Mr. Ewing's application, his memory was still quite firm regarding the situation.

In his closing comments, Mr. Ewing questioned why the Committee had been so concerned with his entire six-year history and not as much on the new information that had been collected and submitted during the past year. He added that most of the new information (laudatory comments) was submitted by respected University of Michigan faculty. He commented that he feels that he was placed in the defensive and did not anticipate this posture.

Dean Gronvall responded that the intent of the Committee is to make sure that all evidence has been reviewed in order to make informed decisions. Mr. Ewing had no further comments and left the meeting.

In beginning discussion, Dean Gronvall focused the question to the Committee, "was the earlier decision of the Executive Committee proper or not?". The Committee made several comments and raised some questions. Dr. Kelch said it was his impression that, while Mr. Ewing appeared to take an inordinate amount of time to complete coursework, he achieved good grades once the work was completed. He asked Dr. Reed if that was a fair assessment and to comment on his record. Dr. Reed agreed, in general, with Dr. Kelch's statements. He added that Mr. Ewing's performance had been uneven and his overall record was the reason he had been given a warning regarding further deficiencies after his first deficiency in the General Pathology and Microscopic Anatomy course. Subsequently, he had a barely passing grade in Human Illness and required a make-up exam in Pharmacology just prior to his failure on the Boards.

Dr. Krause asked for clarification regarding taking National Board exams a second time. Dr. Reed stated that students in good standing are routinely given the opportunity of re-taking a course or National Boards but that being placed on formal warning negates this standard practice. In response to a question, Dr. Reed commented that Mr. Ewing was allowed to take the introductory clerkship after taking the Boards because the grades on the Board exam are not received until near the end of the clerkship in mid-July.

In ensuing discussion, Executive Committee members noted the decision should be based on Mr. Ewing's record and not on the style of presenting oral and written material before the committee. Dean Gronvall noted that his

interactions with Mr. Ewing during the reapplication process raised grave doubts in his mind about Mr. Ewing's ability to assume responsibility as a physician. This, in addition to the overall record, had led him to the conclusion that it would not be a correct decision to readmit Mr. Ewing to the Medical School.

The Executive Committee members supported Dean Gronvall's conclusion. There was a motion to deny Mr. Ewing's request for readmission to the Medical School. The vote was unanimous to deny Mr. Ewing's request.

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DEFENDANT'S EXHIBIT NO. 52

(Summary of Students Dropped from Inteflex Program)

Date Dropped—Student—Circumstances

7/25/75—1—Dropped after multiple deficiencies in 1st two years; no warning letter.

9/9/75—2—Dropped by LS&A.

12/31/75—3—Warning letter for one deficiency; received one more deficiency and dropped.

12/31/75—4—Warning letter; multiple deficiencies; second failure in same course; dropped.

5/7/76—5—No warning letter; LS&A dropped; multiple program deficiencies; dropped from program.

5/10/76—6—Warning letter; received another deficiency and dropped.

7/14/76—7—Warning letter; received another deficiency and dropped.

7/21/77—8—Warning letter; received another deficiency and dropped.

1/10/78—9—Warning letter; dropped by LS&A

5/15/78—10—Warning letter; second deficiency in same course; dropped.

1/8/79—11—Letter of concern after deficiencies in 2nd sem.; Fall in 2nd year had deficiencies in all courses and dropped.

5/7/79—12—Dropped from LS&A while on leave; Inteflex dropped since did not meet conditions of leave.

1/12/81—13—Warning letter; dropped from LS&A; Inteflex dropped since did not meet conditions of leave.

5/11/81—14—Failed a course and then withdrew from same course the second time; dropped.

5/20/81—15—Concern expressed after 1st term; after 2nd term had four program deficiencies and dropped.

7/21/81—16—Warning letter; failed another course and dropped.

7/31/81—17 (Ewing)—Warning letters; failed NBME Part I, dropped.

7/28/82—18—Warning letter; second deficiency in same course; dropped.

1/79—19—Warning letter; failed course for second time and resigned just before being dropped.

1/8/82—20—Warning letter, failing another course and resigned just before student was dropped.